Supreme Court, U.S.
FILED
APR 13 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1551

In The

Supreme Court of the United States

October Term, 1986

ALAN J. KARCHER, as Speaker of the New Jersey General Assembly, *et al.*,

Appellants,

v.

JEFFREY MAY, individually, *et al.*,

Appellees.

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JURISDICTIONAL STATEMENT FILED MARCH 19, 1986

JURISDICTION POSTPONED JANUARY 27, 1987

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(p. 170) A I was the assistant superintendent of the program in Birmingham, Alabama.

Q And what are your duties as a superintendent of the school system in Princeton?

A I'm a chief executive officer for the school district. I work under the direction of the Board of Education, supervising the overall operation of the district, both the business aspects of the district and the problematic aspects of the district.

Q I take it under your jurisdiction as chief executive officer would be public school grades K through 12?

A That's correct.

Q And can you give us approximation of the exact number, if you know, the number of schools or students that are within your public school system?

A This year we have four schools; two elementary schools, which are K to 4, one middle school which is grades 5 through 8, and one high school, grades 9 through 12.

Q Do you know what the student population is?

A It's between 24 and 2500 this year.

Q Are you familiar with the religious or ethnic composition of your student body?

A In a general way.

Q Can you tell us what that is?

(p. 171) A That's primarily—in terms of religious —primarily Catholic and Protestant, but we do have a

fairly sizable Jewish population; sizable meaning 15 to 20 percent, and we have students from over 40 countries represented in the school system.

So, we have the other major religions in the world represented in the student body.

Q Can you tell us how many different languages may be represented by the families?

A Between 40 and 45 on an average yearly.

Q Would you describe for the Courts very briefly your educational background?

MR. ALTMAN: Your Honor, we don't have a curriculum vitae.

THE COURT: All right.

A I received a Bachelor in Arts degree from Ohio State University. I received a Master of Arts in teaching from the University of North Carolina and a certificate of advanced study and administration and doctorate of advanced education, Harvard University.

Q Dr. Houston, can you tell me when, if ever, you became or first became familiar with what has been referred to as the Moment of Silence statute?

A I became familiar with it in news reports as the legislature was debating the Bill and the Governor's veto, and (p. 172) overriding of the bill, and then, more directly, after the Bill was finally passed, by, again, news reports of it, hotline that came through the school system from the Commissioner of Education's office.

Q That would be Mr. Cooperman's office?

A I believe it was Dr. Ruh, R-u-h, sent it.

Q And taking you back to when you first began to read in the media about this moment of silence, can you tell us what your impression was as to what was being adopted?

A I had the impression that it was essentially a way of putting prayer into the school setting in a way that would perhaps get around the original Supreme Court rulings.

Q And did you, before the adoption of the statute, take any kind of action or partake in any discussions or do anything in response to learning that such legislation was in the process of moving through the legislature?

A Not really.

Q When the statute was adopted, did you then have occasion to have to respond in some way, either by talking with the board or taking some administrative action?

A Had several things. My first knowledge of it, the Governor's veto having been overridden, came by way of irate phone calls from members of the public in my community who were concerned about our implementation of the law. We really didn't even know the law had been put into place, so we had (p. 173) not even implemented it yet.

I had three or four phone calls the first morning before nine o'clock from parents who wanted to make clear that they do not want their children in a classroom when this law was implemented. They wanted to be told when we were prepared to implement the law so that they could enforce that with their children.

There were further converastions with the media and whatever about the situation. And then, as I recall, this took place the latter part of the week, and the next Tuesday evening I had occasion to discuss it with my Board of Education.

Q Let's go back to the first morning.

You received phone calls from parents objecting to their children taking part in this moment of silence?

A That's right.

Q Were you aware that the statute, as it had been adopted, did not use the word "prayer"?

A Yes.

Q And that it did not use the word "religion"?

A Yes.

Q That it used a word such as "contemplation," "introspection," "moment of silence"?

A Yes.

Q Did you still, upon learning that, view this as an (p. 174) effort to reintroduce prayer in the school?

A Oh, absolutely.

Q Can you tell me why that was?

A Nationally, there were a number of states going through the same process of trying to introduce legislation. In some cases it involved a so-called nondenominational prayer that the legislature would pass. In other cases it involved a moment of silence. But in my mind, as an educator, the only reason for such an action had to involve the

notion of prayer with religion because there were no educational purposes served by the law.

Q When you were in Alabama, did you have any experience with any similiar type of legislation, or did you have an opportunity—

A That had been ongoing in Alabama for some years, the efforts to overturn the Supreme Court rulings and come up with a state remedy which would get around it. I'm very familiar with that, and keeping up with it, about the same time New Jersey was going through this, Alabama had passed a state prayer written by the Governor's son and we were in the courts over that particular piece of legislation.

Q When the parents called you on the first morning that the law had become effective, how did you respond to the parents?

A I responded by first telling them that we weren't (p. 175) entirely sure what was involved with the law because we had not seen it in writing, that we were sensitive to their concerns, and would not implement the law without a clear—some clear sense of direction, without letting them know what we were going to do.

Q So although—were you aware that the law had, by its terms, been mandated to become effective on that Monday?

A Found out a little later after this conversation.

Q But you did not implement the law prior to meeting with your board the following Tuesday?

A That's correct.

Q Did any teachers or other administrators or other students ask you why the statute hadn't been implemented?

A No. The only response that I had from staff tended to be concern about whether we were going to make them implement it because there was a general opposition to implementing it.

I had calls that first morning, again by nine o'clock, from both principal of middle school and principal of the high school, who were very concerned that we were going to implement the law immediately because they felt it was going to be extremely disruptive to their building operations.

Q Was it explained or did you understand in what way they feared disruption?

A Yes. They felt that most of the students would not comply with the law, that they may have problems with the (p. 176) teachers complying with the law. A number of teachers were opposed to it. They weren't entirely sure how you implemented a moment of silence.

Getting high school students to remain silent when they were told to be silent is not always the easiest task.

If someone objected, how do you let them object? What would you do? How do you punish a student?

All sorts of questions arose. There was just general concern about the situation.

Q How did you meet these concerns in terms of guidelines for implementation? Did you direct anybody to draw guidelines? Did you consider guidelines?

A No. I felt that—normally, when the law was passed by the legislature, we get fairly clear direction from the State Department of Education on how that law is to be implemented.

In this case, because of—there was—seemed to be general confusion at the state level as to what the law meant with at least a portion of the state, Attorney General, the Governor, about expressing their reservations about its legality.

The State Department only sent the law out in the wording that had been passed so that there was no clear implementation.

(p. 177) We were also concerned that because of the general tenor of the situation, and also because Princeton is the kind of town that it is, that we would very quickly become defendants in a suit defending a law that most of us disagreed with anyway.

We felt the best thing to do was not implement it until it was absolutely clear that it had to be implemented, and it was very clear on how it was to be implemented. In fact, we did not implement it at all at any time.

Q What do you mean by Princeton being the type of town that it was? Are you talking about—

A It's a town of very broadly held opinions and very deeply felt opinion. It is a town which does involve a very broad cross section of ethnic and religious background.

It is a town that you have to be very careful that you're not offending people fairly deeply about their beliefs.

We felt that given the number of attorneys we had available in the town, the kind of opinions that were available in the town, that we would very quickly become defendants in a case, that it became very clear that none of us supported to begin with.

Q Did you think that—did you consider that it might be effective, that you could negate some of the opposition by simply explaining that all the statute called for was a moment (p. 178) of silence?

A Well, in fact, we did talk about that. But that really didn't negate it, because, again, the general impression was that it was still an attempt to impose religious action on schools.

Call it what you want, but if it walks like a duck and has feathers and quacks, it is still a duck.

So that it really didn't negate the opposition at all.

Q And would you say that that opposition—that perception of the moment of silence was shared by both teachers, administrators and students alike?

A Yes, and parents.

Q You indicated you met with your board the Tuesday after the effective date of the Moment of Silence law, is that correct?

A That's right.

Q And by "board", you're talking about the Board of Education for Princeton?

A That's correct.

Q And how many people does that consist of?

A There are nine members.

Q Are they representative of the cross-section of the community, do you know?

A To a large extent they are. They are elected by the (p. 179) public at large. There is no requirement that they reflect a diversity of the community, but to a large extent they do.

Q Was the Moment of Silence law a principal subject on the agenda of that meeting?

A We have a lot of principal subjects on the agenda. It was a topic that we spent 20 or 25 minutes discussing.

Q And what was the object of having this discussion before the board that day?

A Since I was supposed to implement the law, I thought it was appropriate for them to know that. I really reviewed for their benefit, as well as the public and press that were available, what our position was at that point in time.

In the course of doing that, it really started out as a formal item for me to the board. The board got into discussion about their feelings about it.

And, so, it ended up being a clarification for me about where the board was coming from as well.

Q You said this was an open public meeting?

A Yes.

Q Were there diverse views expressed by board members?

A Not terribly diverse. They were generally very uniform in their feelings about the law, which was that they were very close to it.

Q What instructions, if any, did the board give you with regard to when—how you should implement or not implement?

(p. 180) A Since the board was not to implement it, there was no vote taken. The sense of the board was that it was not to be implemented until it became clear that we had to.

At that time the board felt they wanted to rediscuss the issue. They were in a—they felt there was a major conflict situation. They have been sworn as part of the oath of office as board members to uphold the laws of the state of New Jersey.

I had a couple of attorneys on the board at that time who felt very strongly that the state law was not constitutional, and they had very strong feelings that they were in a conflict situation of what law should be upheld.

So they had a legal kind of bind that they felt they were in. And there was a personal bind of being the examples to students about being law abiding, and yet, perhaps having to uphold a law which they felt on its face was wrong.

Q Why did they think the law was wrong in this case?

A Well, again, there was a general shared opinion—

MR. ROBERTSON: Excuse me, Doctor.

Judge, I've sat here quietly. I think that we are getting into a lot of hearsay from people who are clearly available.

THE COURT: No, not at all. Overruled.

Q Dr. Houston, the Court has ruled that you can answer the question.

(p. 181) A Could you repeat it?

Q Okay. Would you tell us what reasons were expressed by the board members for their personal opposition to the law? You said you thought it might be unconstitutional. But specifically, what did they say?

A They felt it was an imposition of religious overtones in the school program; that it was, in fact, designed as a moment of prayer for students. While it was an individual choice as to what that prayer might be, that it was a mixing of church and state and that was their main concern.

Q After the board meeting, what action did you take as a result of the meeting?

A Well, I continued to take no action, in essence.

Q Was the Moment of Silence law ever implemented in Princeton?

A Not from my level. There may have been individual teachers, but I' mnot aware of any who may have implemented it. I probably would have heard about it had it taken place, but I did not get any indication that it did.

Q Were you aware of a student petition opposing the implementation of this moment of silence being circulated?

A Yes, the high school principal informed me of that petition.

Q Did you ever see it?

A Never did see it, no.

(p. 182) Q Did you continue—after the first day, did you have contact from students or administrators?

A Yes. I continued to get questions of concern about what we might do and a sense of opposition to anything that we would do if implemented.

At no time did anyone say to me that they wanted to see us implement the law.

Q So you didn't receive any complaints from parents who were in favor of it?

A None whatsoever.

Q You said it had no educational value. Can you expand on that more?

A Well, teachers have adequate opportunity now if they feel students need to contemplate issues that are being taught in the classroom. It doesn't require mandated moment wherever one does it simultaneously. It is very difficult to see any direct educational benefit to that kind of opportunity. It is only a minute, but it takes away from class time.

We are in a period of time now where we can read the press accounts of national reports, concerned about lengthening the school day, school year, because we do not have enough time on task for student learning. And yet this would be something that would clearly take away more

than a minute of instruction because we—had we implemented it, we would have had to design opportunities for students to leave (p. 183) the classroom and then return and what have you, which would eat up more than a minute of time. It would take away from instructional purposes that we already had, and it didn't reflect at all on any instructional purposes available to us.

Q Was there anything about the composition or the type of students that you have in your system that made you feel you would have increased or substantial administrative problems in attempting to administer or implement the law?

A Well, we have exceedingly bright students in the system, and students who are unafraid to express their opinions about any subject.

We had one last spring that took on the President of the United States on his nuclear policy and on national news.

So, with a student body like that you can expect that, you're going to have a great deal of major debate and a great deal of either overt or covert opposition to actions which they feel are not in their interest or against their moral or religious codes or their own ethics.

Q You indicated there was a widespread perception that this was an effort to implement religion or prayer in the school.

Do you have any—can you tell us what the feeling of the student body was about such an effort?

A Again, it was negative. They felt it was an imposition (p. 184) of their own personal choice, and that it was an area that the school had no business getting into.

Q That was communicated to you by students?

A Yes.

Q Teachers feel the same way?

A Yes. The ones who spoke to me indicated along the same lines.

MR. ALTMAN: Excuse me one moment, your Honor. (Pause.)

Q I think you indicated if students objected, you felt that you would have to allow them to leave the classroom if the law were implemented, or did you not say that?

A Yes. that was my feeling, that we would—our local design of implementation would have to allow the option of not participating.

Q To the extent of actually leaving the classroom?

A That was an indication of what was going to happen, whether we allowed it or not. So discretion being the better part of valor, we probably would have designed a situation so that that would happen.

Q Can you tell me why you viewed it being necessary, or why it would follow that students would leave in order to opt out of this program?

A I think that staying in the room, if they were not going to remain silent, would have obviously been disruptive (p. 185) to the people who were remaining silent.

It would have been an imposition of an action which I would not have been able to defend in any way with any arguments that I could muster.

Therefore, the simplest way of dealing with a potential disruption would have been to let them exit from the situation.

THE COURT: You could have done the reverse; those that want to observe silence could have done it someplace apart from the others.

THE WITNESS: They have that opportunity throughout the school day.

THE COURT: In an effort to comply with the statute which, as I recall it, provides for a moment of silence at the beginning or before the school day. Was that a feasible option?

THE WITNESS: We talked about the option since the way the statute was worded, if the school day begins at 8:30, that we would make 8:29 the moment of silence, and then students would have that opportunity since they are in the classroom. So we talked about that as a model.

THE COURT: One place where they could go to observe silence?

THE WITNESS: That would have been difficult with a student population of 1100, like we have in the high school, (p. 186) really finding a place that we may designate silent areas of something. We really didn't think it through that far.

THE COURT: Excuse me while I'm interrupting you. Is this Princeton Township and not Princeton Borough?

THE WITNESS: It is both. The schools are comprised of both municipalities.

MR. ALTMAN: Your Honor, I have no further questions.

THE COURT: All right, Mr. Robertson.

MR. ROBERTSON: Thank you, Judge.

CROSS-EXAMINATION

BY MR. ROBERTSON:

Q Dr. Houston, I will show you an unmarked copy, but this is Intervenor-Defendants Exhibit Number 9, I believe.

Is that the law that you have been referring to on direct examination?

A Yes. I have not seen it in this form, but I've seen the wording which came through on our hot line.

Q I would like to show you what will be marked as Intervenor Exhibit Number 10, and I'll describe it. It is a message from Gus Ruh, Deputy Commissioner of Education, dated December 17, 1982. I ask you to look at that.

A Yes.

Q Is that the form in which you first saw it?

A Yes.

(p. 187) Q The language is not—

A It looks like the same thing, yes.

Q Doctor, does the language of that law require anyone to pray?

A Not in the way it's written.

Q Now, I think you indicated that you made a decision not to implement the law?

A That's correct.

Q And, therefore, the law was never implemented?

A That's correct.

Q And, therefore, you cannot tell us whether in fact the law as implemented would require people to pray?

A That's correct.

MR. ROBERTSON: Your Honor, without the Clerk I have to work this way.

THE COURT: Yes.

Q I would like to show you what will be marked Intervenor's Exhibit Number 11 and ask you to read that.

THE COURT: Is that in evidence?

MR. ROBERTSON: For identification, your Honor.

I will refrain from moving all my exhibits until my case.

THE COURT: All right.

For my benefit, what is D-11?

MR. ROBERTSON: A memo from the superintendent of (p. 188) the Hopewell Regional Schools to his teachers implementing the law.

MR. ALTMAN: Who is the—

MR. ROBERTSCN: Dr. Noonan.

MR. ALTMAN: Is there a date on it?

A December 22.

Q Excuse me, Doctor?

A December 22.

Q Have you had an opportunity to read that?

A Yes.

Q As a superintendent, could you tell us whether in fact Dr. Noonan's procedure would have worked in Princeton?

A Probably not.

Q And is there a particular reason why it would not have worked?

A His schools are very different from mine. I would anticipate he would have much less opposition from the personnel that we have. It is much more of a hoe homogenous community, Princeton.

Q Is your testimony then that it is the nature of the composition of your community—

MR. ALTMAN: Can I—I'm sorry.

First of all, we don't know for the record, and I don't know if your Honor knows, what we are even talking about as being Dr. Noonan's—

(p. 189) THE COURT: I can guess, I don't know.

MR. ALTMAN: I'm just reading it now. The problem with it is that Dr. Noonan isn't here, and I don't think the document can necessarily speak for itself.

I think it would be more proper—

THE COURT: Well, let's go on the assumption that's the procedure that was adopted in Hopewell, and the question is would that procedure have worked in Princeton, and the answer is no.

MR. ALTMAN: That's fine. Because I know Dr. Noonan has various nuances and qualifications with regard to this. I don't have him available.

THE COURT: That's all right. The examination is simply whatever is set forth on this document, if implemented in Princeton, will it work. Yes, that's how I understand it.

MR. ALTMAN: That's fine.

Q Is it your testimony then that it is the particular composition of the Princeton population, student population, that persuaded you in your judgment not to implement the law?

A That's it in part. It was also my—as you probably read, are aware, the individuals differ in their opinions of things.

Dr. Noonan and I may well differ in what we feel our roles as superintendent should be in a case like this.

I had other reservations that would also have (p. 190) come to play, an intertwining of the two, that probably would have stopped it, rather than one aspect.

Q And the reservations that you were speaking about are your personal reservations as to the law is what?

A Intent.

Q Going back to the language of the law. Does that require you as superintendent to direct children to do anything but remain silent?

A It gives a purpose for the silence, contemplation, as I recall the language.

Q Let me focus on my question. Does that require you as a superintendent to mandate or do anything—

A No, I'm sorry. No, it does not.

Q Is the use of silence in schools common?

THE COURT: Excuse me. Is it what?

MR. ROBERTSON: Common.

A Sometimes not as common as we like to see it. But it is used for various purposes.

Q Would you amplify on that last comment that you added, "sometimes not as common as we would like to see it"?

A When you're dealing with children, you sometimes wish that they would be more quiet.

Q You referred to recent reports with regard to the state of our educational system, and I think in particular with regard to the length of the schoool day?

(p. 191) A That's correct.

Q Could you please inform Judge Debevoise as to what report you are speaking of?

A A series of national reports that have come out this past three or four months. The most prominent and most well known is the so-called Bell Commission, the Na-

tional Commission on Excellence, which indicated that the national education system was in a state of crisis and listed a series of things the Commission felt should take place to deal with that, and pointed out the discrepancy between the amount of time spent in schools in the United States compared to some of the other countries, that we feel are either social or economic competition.

Q Did that report characterize the concern as being a function of the amount of time provided by the curriculum as opposed to a concern for the amount of time being utilized for learning?

A I don't know that it made a distinction. I think that it is tied in with a lot of the research in the last 23 years which indicates that affected schools are the ones that have engaged time—more time on task. The more time that you have on task, the higher the learning outcomes are.

* * *

(p. 196) THE COURT: It's different in Princeton from other places?

THE WITNESS: Yes. We have students who come from homes that often were a very highly educational level of a parent, very high expectations for achievement, seriourness of purposes available, as opposed to a place where people are trying to exist and have a lot of other things on their minds.

That's why I'm answering in terms of socio-economic.

Q Is it fair to say that students in your experience who come from homes where there are defined educational goals have an easier time bringing to the classroom educational experience?

A Yes.

Q With a seriousness?

A Yes.

Q Is Princeton representative of the school systems that you have worked in in this regard?

A Princeton is a very complex district because we have students who come to us from all varieties of levels of socio-economic background and education. It is atypical in terms of the mixture.

So, it would not necessarily be reflective, (p. 197) certainly, of my experience in Birmingham, which is a very different kind of setting.

Q So do I—am I to understand that Princeton is unique in your opinion with regard to students' commitments to the educational experience?

A No, I wouldn't say it's unique. I think that my experience in Summit was very similar. That, again, is a town that has a lot of the same characteristics as Princeton.

Again, I think you can make a mistake to characterize Princeton as one way anything. Princeton's uniqueness is in its diversity, not one definition of what what it is as a commuity.

Q Doctor, I think you testified that the students have the opportunity to contemplate throughout the course of the day?

A Yes.

Q To be silent?

A Yes.

Q What type of opportunity is provided?

A Depends on the teacher and the activity at hand.

They have free time during the day when either there is a recess for younger children or for nonscheduled periods for older students where they can be silent or not silent, or any manner of topics that they want to deal with. Within the context of the school day, it depends on what the

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(p. 199) Q Provide for a moment of silence.

Do you recall when you first saw what the terms of the Act were?

A No, I don't think I can recall that specifically.

Q Was it early in your awareness of the debate or late?

A Late, I would say.

Q Was it after the Act had been passed?

A Certainly the details were, I think, a general idea of around the time of the passage and the veto and the overriding of the general nature of it. But the specifics, I really don't.

Q When you received the specifics, did it compare to what you had a general idea of?

A Yes.

Q And in what regard did the specific language comport as your general idea?

A Then it dealt with the moment of silence; that it was to be a uniform opportunity which obviously would have to be imposed by the teacher; that it use the language of contemplation I think was probably the third area that first what I thought.

Q Do you acknowledge a meaning for contemplation that includes reference to things religious?

MR. ALTMAN: I'm sorry, I didn't hear the question.

(p. 200) Q Do you acknowledge the definition for contemplation that it includes things religious?

A In a general way, yes.

Q Do you acknowledge a definition for contemplation that includes things nonreligious?

A Yes.

Q Introspection, what definition do you acknowledge for that?

A I would be hard pressed to make a specific definition on that.

Q From a categorical standpoint, does it include things religious?

A Yes.

Q Does it include things nonreligious?

A Yes.

Q Can you tell this Court whether the children in Princeton, if required to observe the moment of silence, would pray?

A Some of them might. Some of them would not. I'm not sure I can get them to observe a moment of silence to find out.

Q Is there a control problem there?

A I think there would be in a case like this. Again, the problem is the uniform imposition of an opportunity for introspection. I think in the minds of most of the kids it (p. 201) would smack of imposition of religious overtones, whether that was intended or not.

Q Doctor, do they say the Pledge of Allegiance in Princeton?

A We hope they do. They are supposed to. We give them an opportunity to do that.

Q Is there any problem with that?

A Yes.

Q What's the problem?

A High school students tend to particularly find that nonserious activity and not to take it as a serious action.

Q Has there been any reported action to the phrase, "One nation under God"?

A No.

Q Do they sing any patriotic songs in Princeton?

A On occasion, I would assume.

Q Several of those songs reference God?

A Yes.

Q Has there been any reaction to the references?

A Not to the patriotic songs. We have had a tremendous reaction to songs that involve various holidays.

Our choral program, particularly at the high school and middle schools, is essentially based on classical music, most of which originated in the church setting. Occasionally we get comments from parents about that.

(p. 202) Q They are offended by—

A On occasion.

Q In what respect?

A You would get the occasional parent who feels that any reference to God in the curriculum should be removed. I think most of our parents, in the terms of music, would see it as having a curricular aspect that is serious in nature and as being accepted as nonreligious in its intent.

It is not a major problem, but we do have the occasional person who is concerned.

Q So there is some sensitivity in that area based on your experience?

A Yes, a lot of sensitivity on the whole issue of church and state in Princeton.

Q More so than other places where you have been a superintendent or teacher?

A Yes.

Q So in that regard, Princeton may be a unique community because of this particular sensitivity?

A It's different than a lot of communities. Whether it is unique in that area I don't know.

Q I'm only going on the basis of your experience.

Doctor, what is the Pledge of Allegiance used as in your school?

A It is part of the opening exercise.

(p. 203) Q What's the purpose of the opening exercise, from an educational standpoint?

A I'm not sure there is one. It is a tradition, and essentially, it is the way you clean up a lot of loose ends at one time.

Q Would you explain that in a little bit more detail?

A Well, we are required, again, by law, to have this Pledge of Allegiance. We also have certain housekeeping chores in terms of announcements. Attendance has to be taken. It is all done at one time.

Q But from an educational standpoint, not specifically instructional educational standpoint, not overall educational standpoint, you're not sure that these opening exercises provide—

A No. I would personally comment. My personal opinion is that the Pledge of Allegiance, for example, is an important action because of certain values that you want to inculcate in students. But there is no educational point beyond that, in my opinion.

Q Would you tell this Court if the moment of silence were mandated after a Pledge of Allegiance, what the children would think of?

MR. ALTMAN: Objection. I don't think anybody is qualified. He can make a prediction.

THE COURT: That's all he can do. He got his (p. 204) opinion on a number of subjects. That's permissible.

A Well, assuming they would do it, I would think a whole variety of thoughts would occur to them.

Q So there wouldn't be a single thought that you could really speculate upon?

A No.

Q The hot line message that you received from the Department of Education, based on your experience, was that the normal procedure for providing you with information on new legislation affecting education?

A Only in respect that because of the language of this particular Bill, it was effected immediately. So under circumstances like that, they have used a hot line when normally the bills have a longer period of time to be implemented. And they tend not to use the hot line under those circumstances and just send out a written information.

Normally, our channel from the state is through the county superintendents who have met with the Commissioner and are prepared to answer questions and interpret information. But we have received other hot lines, if that's the question.

Q Is it fair to say with regard to this Act, however, those procedures that you just referred to, questioning how you implement it, weren't provided?

A That's correct.

(p. 205) Q And, indeed, you were informed that they wouldn't be provided?

A That's right.

Q And, indeed, you were left to your own devices?

A I would say that's probably accurate too.

Q How did you feel about that?

A I have mixed feelings. At one level they very rarely leave us to our own devices, so it was a relief.

At another level, since it was such a thorny issue, it would have been helpful to have had some further guidance, or at least interpretation of what's meant.

For example, following up your earlier question about when the Pledge of Allegiance is done; the Bill calls for it to be done at the beginning of the school day. Back at our high school, those activities take place between third and fourth period.

So, having implemented it, could we have waited until that period of time to have done it? Would it have to take place at the beginning of the first period?

There are things like that that clarification would have been useful on.

Q Doctor, have you, during the course of your experience as superintendent of Princeton schools, had any reaction to sex education courses?

A If I had or have I received reaction?

(p. 206) Q Have you received?

MR. ALTMAN: Can I ask where we are going?

THE COURT: Well, let's go a little ways, but not very far.

A A few.

Q On what basis?

A We are not doing enough, we are doing too much. I want my child to have more of that. I want my child not to participate. We have had both kinds of reactions.

Q Have any of those reactions been based on religious scruples, principals?

A I would have to say, truthfully, it has never been put in that context to me.

MR. ROBERTSON: Judge, can I have one minute?

THE COURT: Sure.

(Pause.)

MR. ROBERTSON: No more questions.

THE COURT: Any redirect?

MR. ALTMAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. ALTMAN:

Q I take it from one of your last responses that what has been referred to as opening exercises in the high school in Princeton does not take place. There is no opening exercise?

A Not if you consider opening a school day. We have a (p. 207) home room period which takes place between third and fourth period in the morning.

Q But, the announcements, what you call pulling loose ends together—

A That's taking place at that point, in the home room.

Q And the Pledge of Allegiance was done, you said, between third and fourth period?

A That's home room, yes.

Q That is the home room?

A Yes.

Q So that's in the middle of the day?

A Middle of the morning, yes.

Q You were asked if silence could be a useful tool to redirect. Do you think that silence at the beginning of the morning is the most appropriate time for redirections, or would there be other times during the school day where there is a greater need for redirection?

A Well, the redirection that I had in mind, say between reading and math where you were breaking your teaching, particularly appropriate, say at the elementary level, where the same teacher teaches a number of subjects.

Beginning of the school day, you're not redirecting to anything at that point.

Q So you don't see any particular necessity from an educational or redirecting standpoint for a moment of silence?

(p. 208) A You are trying to get them reved up and into the work, not slow down at that point.

Q You were asked by Mr. Robertson to predict—give your opinion as to prediction as to what students might

do during the moment of silence if it were implemented in Princeton. You said there would be a variety of things that they might think about.

Might religion be one of those?

A I would think so, yes.

Q And you were talking before about the influence of the home, in the context of Princeton students coming from homes that socio-economic background was higher, better educated parents and so forth.

Wouldn't the same principle apply if the student came from a very religious home? Wouldn't it—wouldn't you think it would follow that there would be more likelihood the students would tend to use the moment of silence for prayer?

A Yes, I would believe that.

THE COURT: If that is true, why do we have the Council of Churches so vigorously opposing the moment of silence?

THE WITNESS: I talked to my minister about my position on this Bill. I'm a minister's son. So I have sort of mixed feelings about the position I was taking on it. I felt I was right, but I didn't want to offend my religious (p. 209) mentor.

So I talked about it, and, basically, my own minister agreed with my position, which is that it tends to be an undermining of the religious activities. The proper role for religious training is the church, and personally, I'm affronted from the argument of the need for this as a religious activity.

I feel my own religion should be strong enough to stand on its own without help from the state.

THE COURT: Well, then the religious home of that nature would not be participating in the moment of silence for religious reasons?

THE WITNESS: I use moments of silence during my day to pray, so I wouldn't rule that out.

THE COURT: Would you use an enforced moment of silence to pray?

THE WITNESS: I really don't know. Probably some of the time I would and some of the time I would have my mind on other things.

THE COURT: All right, thank you.

Q To follow up Judge Debevoise's question to you; wouldn't you think that the conduct of a—you have had experience reaching third to six graders, I understand?

A Yes.

Q Don't you think the conduct or the response of a child, (p. 210) say grades 4 to 6, might be different than the response of an adult such as yourself?

A Yes.

Q A child might be more directly influenced by a teacher or peers in the classroom?

A Yes. A child's reaction is going to be different than a teenager's reaction.

Q You may have answered this, but let me go over a couple of points.

Would you classify the moment of silence as time on task as you define time on task for Mr. Robertson?

A No.

Q When Mr. Robertson asked you if you have personal reservations with regard to the enforcement or the implementation of the moment of silence and you said—he asked you if that was with regard to the intent of it, and you answered yes.

You didn't really—I don't know, you may have already indicated what your personal reservations are. Were they premised on educational values, religious, constitutional?

A I have two levels of reservation. One was that it was a waste of time and a potential disruption that we didn't need in the educational process. The other was the more fundamental kind of reservation about whether in fact it was (p. 211) actually an appropriate action legally to take.

Q You also responded affirmatively to a question put to you by Mr. Robertson. He said to you: There is no requirement of the superintendent to do anything in the moment of silence. You looked at the law you had looked at and indicated that is correct.

Were you talking in terms of the express language of the statute, or were you talking about, as well, the natural implications of the law?

A Express language only. The law, I would have a responsibility because, again, I would have to oversee the implementation. The law doesn't state it so.

THE COURT: Mr. Altman, I think we must have exhausted this subject.

MR. ALTMAN: I think so, Judge. I just had a couple things I'm running through. If I could have half a minute?

THE COURT: All right.

(Pause.)

MR. ALTMAN: I'm through.

THE COURT: Good.

Yes, Mr. Robertson, anything more?

MR. ROBERTSON: No recross.

THE COURT: Fine. Thank you very much. You may step down, Dr. Houston.

(p. 212) (Witness excused.)

THE COURT: Who is next?

MR. ALTMAN: Mr. Chuman.

JOSEPH NATHAN CHUMAN, affirmed.

THE COURT: Yes, go ahead. Full name?

THE WITNESS: Joseph Nathan Chuman. C-h-u-m-a-n.

DIRECT EXAMINATION

BY MR. ALTMAN:

Q Mr. Chuman, are you presently employed?

A Yes, I am.

Q What capacity?

A I'm the leader of the Society for Ethical Culture in Bergen County, New Jersey.

Q Does that have a name, that society?

A The Society for Ethical Culture.

Q Bergen County Ethical Society?

A Yes. Ethical Culture Society of Bergen County.

Q Can you briefly define for us what the objectives of the ethical culture society are?

A Yes. The Ethical Culture Society is a liberal religious organization that exists to promote respect for the worth and dignity of persons as its highest concern.

Q What is your role as the leader of the Ethical Culture Society?

A Well, as leader of the Ethical Culture Society, I serve (p. 213) in a function of the—being parallel to that of clergy person in a conventional religious organization.

I speak at our regular Sunday morning meetings. I do pastoral counseling with members and others, and I

represent the values of the Ethical Culture Society movement in broader society.

Q I take it then that there are other chapters or ethical culture societies besides the one in Bergan County?

A Yes.

Q And are there others in the state of New Jersey?

A Yes.

Q Are they independent of one another?

A Yes. They are organized congregationally for the most part, although there is a national organization of ethical societies.

Q Are you registered—or I'm not sure you have to be registered as a lobbiest—or identified as a lobbiest in connection with that group or any other?

A No.

Q Do you represent that group from time to time in expressing its interests or objectives to the legislature?

A Yes, I do.

Q What form does that take?

A Well, it can take the form of writing letters to state Senators and Assemblymen as well as federal officials on (p. 214) relevant issues. It can involve personal discussion with representatives, and from time to time

I've given testimony before hearings in the legislature on issues on which I have some expertise.

Q What is your area of expertise? Can you explain what your background is by way of experience and education?

A Yes. I'm a graduate of Queens College in New York. I'm graduated with honors in classical Latin. I also have a professional certificate in pastoral counsel from the Post-Graduate Center for Mental Health in New York.

I have a masters degree from Columbia University in the philosophy of religion.

I'm presently a doctoral candidate in philosophy of religion at Columbia.

I've also been involved organizationally with groups who promote civil liberties, human rights, so on and so forth.

Q Do I take it that your time, let's say your non-recreational time, is devoted entirely to either pursuing your education or your Ethical Culture Society activities and the other things you mentioned as opposed to any other employments—

A Yes, I have no other paid employment. I also raise a family.

Q When did you first become familiar with what has been (p. 215) identified as the Moment of Silence law?

A Oh, I don't remember the exact date. It was probably early in 1982.

Q Can you tell us how that came about?

A Well, through information that I received from people who were involved in the civil liberties field, from reading the newspapers, so forth.

Q What did you first learn about the Moment of Silence law in the initial stages? What did you understand it to be?

A Well, my understanding throughout has been that it was a way of returning a form of prayer to the public schools by calling it something else.

Q And that was your impression when you first learned about the law?

A Yes, it was.

Q Can you tell me from what you derived that impression?

A Well. I think around the time that the law was formulated, on a national scene, there was certainly a lot of discussion in certain political camps with regard to restoring prayer to the schools, discontent with the Supreme Court's decision which banned verbal prayer from—organized prayer from the schools, and just the fact that on the face of it, it seemed to me that since a moment of silence can be mandated by any teacher at any time—previously I was a teacher in the New York City public school system—it seemed to me on 'he (p. 216) face of it that an act of the state legislature was, in effect, a redundancy, and had to have a purpose other than the one that was stated.

Q How long were you a teacher in the New York school system?

A For one year.

Q What grade level was that?

A Elementary grades.

Q When you learned of the Moment of Silence law in early 1982, I think you indicated, had you formed this impression that this was to reintroduce prayer? Did you take any action in response thereto?

A Well, initially I had written letters, I believe, to Senator Feldman who is the representative state Senator from the district in which I work, which is the Teaneck area.

Also, a letter, I believe, to the Governor. And had generally discussed the issue with others, including clergymen in my area whom I had worked with with regard to certain issues of mutual concern.

Q As time passed, did you take any further action or did your—did the Ethical Culture Society as a group take any action or respond to the knowledge of this proposed legislation?

A Well, I don't recall. We may have passed, or the board may have passed a resolution in opposition to it, but I'm (p. 217) not—my memory fails me on that point.

Q Prior to the adoption of the law, did you continue to have occasion to, say, during the time that it was being debated, or during the time of the Governor's veto, have occasion to read about the law in the newspapers?

A Sure. I followed the case as it progressed.

Q Did you ever form an opinion that the law was for any purpose other than to introduce prayer in the schools?

A That it was for other—did I form that opinion?

Q Yes.

A Well, there were obviously people who did have other opinions, and I familiarized myself with their viewpoint, but it was not a conclusion that I, myself, had drawn.

Q Did there come a time when you had occasion to testify or appear before a legislative committee?

A Yes.

Q Do you recall how that came about?

A Well, yes. I had heard that there were going—there was going to be an open testimony, relatively informal nature, held by Senator Feldman's—called by Senator Feldman in his capacity as chairman of the Senate Education Committee, and I testified at those hearings.

Q And would you recall the date?

A Yes. It was June 21, 1982.

Q And do you recall how long you were there that day (p. 218) before the Committee?

A Well, my own testimony was perhaps 15 minutes. The hearings lasted about an hour and a half, two hours.

Q Were you there for the entire period of time?

A Yes.

Q And the hearing then concluded for the day?

A That's right.

Q While you were there, do you recall who else may have appeared and testified before the Committee?

A Yes. Assemblyman Zangari was the first to testify. A Ms. Judy Merciano, who at the time was the legislative director for the American Civil Liberties Union, testified.

I gave testimony. There was a representative from the New Jersey Educational Association who testified. Another gentleman who I don't—whose title and name I don't recall, who also represented some aspect of the educational interests in the state testified, and a Mr. Herbert Garvel from Fair Lawn, who is a parent and a long-time member of the Bergen County Chapter of the American Civil Liberties Union, testified.

Q Did any of the witnesses who appeared from some educational group, for example, NJEA, testify affirmatively or at all with regard to the educational value of this proposed moment of silence?

A Well, no. The people who came from representing (p. 219) educational interests were opposed.

Q Was there any—while you were there, anyone that was not directly affiliated with an educational, say, association, but rather an educator who came or some experts, psychologist, trained educator, to argue that this had an educational component?

A No.

Q Did you hear anybody on the Committee argue that there was an educational component, if you recall?

A My memory on that is vague. I do recall that there were only three Committee members there. Two of them were in favor of the Bill at the time and one was opposed.

Q And who are you talking about?

A Senator Feldman was opposed. Senators Dumont and Dalton were in favor it.

Q You said you heard Senator—or Assemblyman James Zangari testify?

A Yes, he was the first to testify.

Q Do you recall what he stated was—was he in favor of the adoption of this law?

A Oh, very much so.

Q Did he state his reasons?

A Well, yes he did. He thought that the moment of silence would be useful in the schools and would serve an educational purpose.

(p. 220) Q What purpose?

A Educational purpose.

Q A teaching purpose?

A Yes.

Q Did he expand on that and say in what way?

A He may have, but I don't recall.

Q Did he express any religious intent that he had with regard to the adoption of this law?

A Yes. It was strongly implield in his statement.

Q And do you recall what the nature of his statement was from which you made this conclusion?

A. Yes. I recall very vividly that he talked in his testimony about his own background. He said that although he was a Catholic by conviction, as a child he had gone to Protestant schools. He had been encouraged to participate in Protestant oriented prayer, and he said prayer had never done him any harm.

Q Did you have occasion to speak with Assemblyman Zangari at any time personally?

A Yes, I did.

Q And when did that take place?

A Right after the hearings concluded.

Q What was your purpose for speaking with him?

A Just that I think he wanted to speak to me.

Q He sought you out?

(p. 221) A Well, I don't recall precisely, but he was certainly interested in what I had to say.

Q Can you tell us what he said to you?

A Well, again, I don't recall the entire conversation. But I had asked him specifically at one point whether he would be happy to see the restoration of verbal prayer, articulated prayer in the schools as well as Bible reading. And he said he most definitely would. And beyond that, I had asked him, as I recall, what his concerns were for those parents who wished to raise their children as atheists.

And he said, "Oh, you must mean people who are involved with Madeline Murray O'Hare." He went on to

say those people are so few in number, that those interests, we can basically afford to discount him.

Q Did he convey a perjorative attitude towards those type of people by either his words or demeanor?

A Yes, that he was basically discounting the convictions of atheists or "nonbelievers."

MR. ALTMAN: May I have one moment, your Honor?

THE COURT: Yes.

(Pause.)

MR. ALTMAN: I have nothing further, your Honor.

THE COURT: Mr. Robertson.

MR. ROBERTSON: No questions.

THE COURT: Good. Thank you very much.

* * *

(Excerpts of Trial Testimony of Marianne Rhodes)

Rhodes—direct

(p. 225) A Yes, sir. It is basically part of my job responsibility to monitor the committees, to testify, to track, follow the legislation that affects public education.

Q I take it that your role with regard to this law was to monitor the legislation?

A That's correct. And also to testify if my director had not been present.

Q Did you have any responsibility—was it part of your job to prepare any report, verbal or oral, for the use of the New Jersey Education Association, School Board Association?

A School Board Association.

I took minutes, handwritten minutes of the Committee meeting for use, basically, to brief the rest of the staff as to what occurred. It is also helpful to us when we look back on the legislation to remember what went on to help us in our lobbying efforts.

Q Do you have any specific recollection of hearing various Assemblymen or Senators speak with regard to this proposed legislation?

A Do you mean in the Committee room when the Bill was posted for discussion?

Q Yes.

A Yes.

Q And where else would they be speaking that you would have occasion to hear them?

(p. 226) A On the floor of the legislature when the bill is debated.

Q When would you have had occasion to take notes?

A I took notes in Committee.

Q In Committee. Okay. That's what I'm referring to.

A Um-hum.

Q Do you recall who you had occasion to listen to of the Assemblymen and Senators before the Committee hearings?

A Yes, in the Assembly Committee, Assemblyman Zangari was present to argue his position on his legislation.

Q And did you also attend hearings before the Senate Committee?

A In the Senate Education Committee I recall hearing Senator Feldman speak on the legislation. Once again, Assemblyman Zangari and Senator Ewing made some very brief remarks.

Q Do you recall specifically what was said by Senator Zangari at the Assembly Education Committee hearing?

A Assemblyman Zangari indicated that he had worked very hard on the legislation, that it had been reduced to, I think he said, 50 words or so. And that the intent was basically to provide the minute of silence at the beginning of the school day.

Q Do you recall anything else he said? If you don't recall, just say so.

(p. 227) A I don't recall. I do have my minutes.

Q You prepared your minutes contemporaneously with attending at the hearing?

A That's correct.

Q Did you subsequently type up those minutes?

A When I returned to the office—I don't recall whether it was the same day or that week or whenever—I dictated from my handwritten minutes the minutes that could be reproduced for the rest of the staff.

Q And would you say that your handwritten notes, taken contemporaneously with the hearing, was an accurate reflection of what you heard at that Committee hearing?

A Yes, sir.

Q And would your typed report accurately reflect those minutes and what was said?

A Yes, I believe so.

MR. ALTMAN: May I have a document marked for identification? I believe it will be 77.

(Exhibit marked Plaintiffs' Exhibit P-77 for identification.)

Q Miss Rhodes, would you inspect the document marked just now for identification as P-77? Can you tell us what that is?

A Yes, sir. The first document dated May 18th is the recorded minutes of the Assembly Education Committee that had been dictated by myself and typed by my secretary. The second

* * *

(p. 229) admissible for the purpose of showing legislative intent. I don't think Assemblyman Zangari's own personal

motive is relevant. But I think it is admissible on the independent ground it is not hearsay as to what the public and the school board served by the public, what impression they got of the purpose for the legislation.

For that purpose I think it is admissible. So you may inquire.

MR. ALTMAN: I skimmed over the recollection.

MR. ROBERTSON: I'm not going to insist on it. I think it would ease the burden if she feels more comfortable reading it. I'm not going to insist on past recollection recorded.

MR. ALTMAN: We have been through that before. I know the witness is more comfortable, in fact, only is dependent upon the written record.

THE COURT: All right, fine.

Q Would you please read the statements recorded there attributable to Assemblyman Zangari?

A Assemblyman Zangari was present to speak in support of his Bill. He indicated that the Bill had been reduced to only 54 words, and that it was important that our society get back to the religious values which are deeply imbedded in our ideals.

He quoted from President Reagan, who had (p. 230) expressed his support for a constitutional amendment to permit school prayer. I believe that's the only statement that I have recorded from Assemblyman Zangari. But I wish to point out, I just took down the things that I felt were significant.

Q Was there another occasion that you listened to Senator Zangari, I think you said before the Senate Committee on September 23?

A Assemblyman Zangari explained his Bill, using the language of the Bill. And then in response from Senator Feldman, Zangari responded, "They publicly won't do it unless they are directed."

Q What are you talking about, "do it"? What was referred to there?

A Senator Feldman asked the question, "Since there is nothing that prohibits students from praying, why is this Bill necessary?"

Zangari said, "They publicly won't do it unless they are directed."

Q Any other remarks that you felt were significant that you recorded there?

A I have recorded remarks from Senator Ewing. However, it is not clear to what he was referring in my minutes.

Q May I see that document, please?

Thank you.

You said that it wasn't clear what Senator Ewing

* * *

(p. 234) Q He testified about Assembly Education Committee meeting on June 21, 1982. Do you have notes with regard to that meeting?

A Not that I'm aware of, no. And I don't recall attending that meeting.

Q Do you recall anyone from your Association attending that meeting?

A Not to my recollection.

Q That is a different meeting, and distinct from the meeting that is referred to in your notes?

A That is correct.

Q During the course of the Assembly meeting, which is the earlier of the two, as I understand it, was there any discussion about the pedalogical—pedagogical use of the moment of silence?

A Would you repeat that, please?

Q Sure, certainly.

During the Assembly meeting was there any discussion about the pedagogical use of the moment of silence? Is the word "pedagogical" bothering you?

A No, I understand you. But you're talking about during the meeting?

Q Yes, ma'am.

A Basically, whatever is in my notes is what I recall.

Q So you don't have any independent recollection of (p. 235) anything other than what is in your notes?

A No, sir.

Q And do your notes accurately represent all that was said during the course of the meeting?

A I believe they represent the points that I felt were significant.

Q Is it fair to say then that they were points that struck you, but not necessarily all the points mentioned?

A That's correct.

Q Would that be true for the Senate notes as well?

A Yes, sir.

Q I've handed you—let me go back.

With regard to the Assembly meeting, how long was it?

A The duration?

Q Yes.

A Generally, the meeting—I don't recall. They are generally two hours.

Q And what portion of the meeting was devoted to 1064, if you recall?

MR. ALTMAN: Objection. She said they are generally—

THE COURT: She may recall that part. Overruled.

A There were a number of other bills on the agenda. I can't say specifically.

* * *

(p. 237) A Yes.

Q And do you have—

MR. ALTMAN: Can I see that thing before we continue any questioning on it?

THE COURT: Yes.

(Pause.)

THE COURT: Do you have a question?

Q Do you recall from whence came those comments about the use of the moment of silence, and I'll quote, "To

provide students with an opportunity to collect their thoughts and prepare for the day's learning''?

A Obviously one of the proponents had argued that as stated there.

Q Was it merely one proponent, or is it as the statement says, ''If, as proponents argue—''

A Could have been several, um-hum.

Q Is it fair for this Court to understand, for us to understand, that there was sufficient group of individuals who proposed this legislation for that purpose that caused you or your Association to include recognition of that in this statement?

MR. ALTMAN: Your Honor, I don't think there is a sufficient foundation to utilize this statement to elicit from this witness the evidence in the statement.

THE COURT: Well, she has said it refreshes her (p. 238) recollection.

MR. ALTMAN: I don't know that she did say that.

THE COURT: That's what I understood her to say.

MR. ALTMAN: I thought she said in response to a particular remark.

THE COURT: No. I'll overrule the objection.

Q Ms. Rhodes, is my question clear to you, or would you want to hear it again?

A Would you repeat it, please?

Q All right.

That paragraph—that statement, would it be fair for this Court to infer that there was sufficient—there were

sufficient numbers of proponents that proposed this legislation as being for the purpose of permitting children the opportunity to collect their thoughts and prepare for the day's learning, so that your Association felt appropriate to include that as being one of the positions on the Bill?

MR. ALTMAN: I object to the form of that question.

THE COURT: The form is a little awkward.

MR. ROBERTSON: It is cumbersome, Judge. I'll take any help I can get to get it out.

Q What I'm trying to search for, and maybe I can do it this way: I know this is cross-examination, but there were proponents who took that position, were there not?

(p. 239) A I had heard that argument.

Q And that argument had been an argument during the course of the debates for this legislation?

A From some proponents.

Q And there were sufficient proponents so that your Association felt that it should be included and recognized in the position statement that you took?

A It should be refuted if we were opposing the bill.

Q Fine. But it was included as being a recognized position on the Bill?

A An argument.

Q That had been made?

A That had been made.

Q All right.

MR. ROBERTSON: No further questions.

THE COURT: Any redirect?

MR. ALTMAN: Yes, a few questions on this document, your Honor.

REDIRECT EXAMINATION

BY MR. ALTMAN:

Q Ms. Rhodes, this document, from its date, was prepared apparently for submission to the Assembly or the Senate after the Governor had vetoed this legislation?

A That's correct.

Q And, therefore, is it fair to assume that these (p. 240) arguments that were being advanced by some alleged proponents that there was an educational purpose, were apparently being advanced with the purpose of promoting an override of the veto?

A That's correct.

Q And at the time that this was taking place, the Governor indicated, had he not, that the reason for his veto, in part, was that he believed this was unconstitutional?

A That's right.

Q Had you heard—when you say "proponents," you said that you had heard these these arguments were being made. Did you actually hear them being made, you know, in the context of committee hearings prior to the veto by the Governor? Do you recall?

A I don't recall.

Q What I'm trying to find out is do you know where and when this argument developed that there was some educational purpose?

A Whenever the discussion came up, particularly with Assemblyman Zangari, when he was there. I'm sure he affirmed that because of the language that was used in the Bill does not refer to prayer.

Q Can we conclude from this document that this was—this argument was being debated, the position taken by the School Board Association because they were attempting to (p. 241) override the Governor's veto that had rested on the argument that this was unconstitutional, this statute?

A We opposed the Bill.

Q On what ground did the New Jersey School Board Association oppose the Bill?

A On the grounds that we had policy from our delegate Assembly which instructed us to oppose this and similar legislation several years ago, which mandated—and that's a key word—prayer, meditation or silence.

Q So I take it from this position paper that the School Board Association, through its delegate Assembly, concluded that although the word "prayer" had not been mentioned specifically in the legislation, the School Board Association viewed the moment of silence as an effort to reintroduce prayer into the schools, that was the argument being made by the New Jersey School Board Association?

A Yes.

MR. ALTMAN: I have nothing further of this witness.

THE COURT: Anything else?

MR. ROBERTSON: No recross.

THE COURT: Thank you very much. You may step down.

THE WITNESS: Thank you.

(Witness excused.)

* * *

(Excerpts of Trial Testimony Lloyd J. Newbaker)

Newbaker—direct

(p. 246) A Through our lobbying staff, most generally, or through testimony from someone selected to represent our organization.

Q Resolutions, I assume, are reflected in some printed form, such as P-69?

A Yes, they are submitted in written form.

Are you saying the resolutions or the positions?

Q Well, you better distinguish for me the position statement from a resolution.

A That document, I believe, is a statement that—

Q You can hold on to it.

A Yes. This is a document which transmits the position of the Association. It would have been written by the staff and was intended for members of the Assembly and the state Senate.

Q You said transmits the position of the staff?

A Of the Association. It was written by the staff.

Q By the staff. And does it reflect the staff's view, or does it reflect your delegate's view?

A It reflects the delegate's view very distinctly.

Q And how would that be distinctful? What is then the resolution as distinct from a position statement?

A A resolution is, in our terminology, a formal means of communication from a board of education to the Association requesting some action.

Q I see. So the resolution is an internal form of (p. 247) communication or an internal position?

A That's correct.

Q Internal within the New Jersey School Boards Association?

A That's correct.

Q And the position paper such as the exhibit in front of you is something used to communicate outside the School Board Association?

A That's also correct.

Q Who serves as lobbyists between the School Board Association and the legislature?

A For our Association?

Q Yes.

A Our staff is headed by Octavius T. Reid, R-e-i-d, Jr., Marianne Rhodes, June Reock, R-e-o-c-k, and Dennis Crowley, I believe is on our staff at the time, and he has since left and joined the Department of Education.

Q It has already been testified to by Ms. Rhodes that the document in front of you—I think it's P-77—

A I think it says Exhibit 69 in the corner, I believe.

Q Okay, sorry. That's correct. P-69 reflects the position taken by the New Jersey School Board Association with respect to the Moment of Silence law?

A Yes, I believe it adequately represents our position.

Q Can you tell me how it came about that the New Jersey (p. 248) School Board Association adopted that position?

A This was prompted by a resolution from Montvale Board of Education in Bergen County. I believe it was submitted for action for the June 13th, 1981, delegate Assembly. The resolution—

Q Dr. Newbaker, let me mark something and maybe I can assist you.

MR. ALTMAN: Do you want me to mark this?

THE COURT: Yes.

MR. ALTMAN: I think it's P-78.

(Exhibit marked P-78 for identification.)

Q Dr. Newbaker, I show you what I've marked P-78 for identification. Can you tell me what that is?

A This is a resolution that was received from the Montvale Board of Education in Bergen County. It also contains the background and discussion information and the recommendation of the resolutions committee to the delegates.

Q And does that have a date?

A It has a date of June 13th, 1981.

Q And what was resolved by that Montvale school board?

A The school board is requesting that period of silent meditation has its place in the family and church, and that time for silent prayer and silent meditation is available to those who seek it on a given day, and that it's important for for American citizens who do not wish to engage in prayer and (p. 249) meditation—the First Amendment to the Constitution of the United States provides for the separation

of church and state. And whereas Bill A-2197, which has been passed by the Senate and Assembly, provides for a one-minute period of silence in public schools for the participation of all students at two specific times during the school day, it is, therefore, requested and resolved that the Association oppose Bill 2197 and any similar legislation which would mandate prayer and/or a period of silence or meditation in the public schools.

Q I assume that that was received by the staff of the New Jersey School Board Association and they took some responsive action.

A Yes, sir. We developed the background and discussion that is attached. And after having a staff meeting, it became my recommendation to the resolution committee.

Q What became your resolution, as it was proposed—

A The attached discussion and background, yes.

Q Can you tell us a summary—can you tell us what it was that was resolved or recommended by you and your staff to the resolution committee?

A To summarize very briefly, I think we agreed considerably with the intents of the resolution. We spoke a little bit about the Supreme Court, some of the cases that had appeared before the Supreme Court, specifically where there was an intent to overturn or get around the Supreme Court (p. 250) decision.

I think also we cited the United States Federal District Court in the District of Massachusetts where a decision had recently been rendered. And in that particular case, some secular purpose was believed to be intended in the legislation, specifically, greater self-discipline, respecting the

authority of teachers, and we mentioned in the discussion that A-2197 was vetoed by the Governor and we raised the question as to what is the purpose behind the Bill.

We believed that it was the prayer in public schools and the Bill was plainly unconstitutional. I think that was a fair summary. There are other statements here.

Q Did you take any position as to whether the Bill had any substantial educational component?

A Only to the point that the supposed secular purpose is to calm the students and empart an atmosphere of quiet seriousness to the school day.

Q Did you and your staff feel that this legislation would achieve that end?

A I don't think we agreed to that.

Q You said you submitted the resolution in similar format—strike that.

I take it then that because you saw this as a method of reintroducing prayer in school, your staff and yourself recommended to the resolution committee that the New (p. 251) Jersey School Board Association should oppose the legislation?

A Yes, that's correct.

Q What was the next—how does the procedure within your Association then follow?

A This recommendation, as it is here, went before the resolutions committee, which is simply our board of directors, chaired by the vice-president for legislation. It is discussed there and at that point the committee can agree with the recommendation and approve it as it stands. They could

modify it, or, in fact, direct the conclusion to be drawn differently.

Whatever action taken by them is then sent to the school district for their review, and it is subsequently placed on the agenda of the delegate Assembly.

Q What action was taken by the resolution committee?

A It was approved as submitted.

Q Meaning to oppose the legislation because they viewed it as an effort to reintroduce prayer in the schools?

A I assume that the Committee agreed with the statements presented.

Q How did they communicate that position?

A They conveyed this entire document to the school districts.

Q To all 611 school districts?

A To all 611 school districts.

(p. 252) Q So that they will be prepared to have the delegates discuss and vote on that resolution at the next meeting of delegates?

A That's correct.

Q Which would have taken place when?

A June 13th, 1981.

Q And was this resolution voted on at that meeting?

A Yes, sir, it was.

Q And I take it that it was adopted by the delegates of the New Jersey School Board Association?

A It was adopted by the delegates.

THE COURT: Do you know what the vote was?

THE WITNESS: I don't know the vote. The only time we record a vote is when it is a very close vote and account is taken. My impression is, in reviewing the minutes of the meeting, that it was not a close vote.

Q Can you tell us what the—were you present at the meeting of the delegates in June?

A Yes.

Q And can you tell us what the discussion focused on?

A My recollection is that a number of the delegates spoke in opposition to the recommendation. There were several. For the most part, my recollection is correct, advocated returning prayer to the schools.

Q The document that you're holding in your hand now, (p. 253) which we have marked at P-77, is the resolution. Earlier in your testimony we were referring to a document that had been identified by Ms. Rhodes as a position statement. I believe that was P-69?

A Yes, sir.

Q Does the position statement flow from or is it written up as a result of the action of the delegates and the adopted of the resolution?

A All of the authority for staff action comes from the delegate decision that I cited.

Q Would the delegate—strike that.

Would the resolution be communicated to legislators by your lobbyists, or would your position be in the form of a position statement or oral communications?

A Would you repeat that, please?

Q Did that resolution actually get presented in its form as it exists in P-77 to the legislature?

A No, it was not conveyed in this form.

Q I take it then that the position is conveyed in the form of the position statement earlier identified by Ms. Rhodes as P-69?

A It was conveyed not only in that position statement because this was submitted at a time—the staff's discretion, that they wanted to bring again to the attention of the Senate and the Assembly our position since they were (p. 254) preparing for a vote on the Governor's veto. They were preparing to override it.

However, I suspect also that our staff would have conveyed our position to the Assembly and Senate Education Committees.

Q Is the position statement that I marked P-69 in front of you?

A Yes.

Q Ms. Rhodes was questioned—I believe you heard that questioning—as to the fact that there are statements contained therein that proponents argued that the proposed moment of silence legislation had an educational component in that—to provide students with an opportunity to collect their thoughts and prepare for a day's learning.

A Yes.

Q Was that proponent—does that refer to legislators or does that refer to someone else?

A I suspect at this point, since the issue had been before the legislature and the Governor for some time, that it could represent our staff's impression of anyone who might argue for the Bill.

Q It might be a legislator or it might be someone from a school board?

A It could have been. It might even have been—might have been some of our members or even delegates.

(p. 255) Q And the decision of the delegates was to reject the argument, and I take it from the position statement that they felt such legislation was not necessary?

A That's correct. The New Jersey School Boards Association and local boards have often taken strong positions regarding local prerogative and to oppose mandates.

Really, I believe to add to that if boards felt that this was necessary from an educational perspective, they would have had the authority to have taken action locally.

Q Well, I think we have made clear in the questioning that the New Jersey School Boards Association saw no educational value in this proposed legislation What was your personal opinion?

A Well, I would agree with that position. I think that—first of all, I think it should be said that if there was that great an educational value, certainly it would have been used to a broader extent. I think teachers would use the circumstance. They certainly have that prerogative in controlling their classroom. If it was a community-wide issue, I would have thought that local boards of education would have passed some policy to imply that period of silence would be used.

Q The resolution—in your testimony you referred to—when we talk about the resolution, you referred to Assembly Bill A-2197. We are referring to Assembly Bill in this trial (p. 256) that was ultimately adopted of 1064.

A That's correct.

Q Were you aware the contents of both was substantially the same or the same?

A Yes. There was no question in our mind that the action taken by the delegates specifically referring to 2197 applied equally to 1064.

Q From what you read and heard, did you form an opinion as to what—apart from what the position of the School Board Association was, did you individually form an opinion as to what the purpose of this legislation was?

A I think at the time there were a number of states which had attempted to circumvent the Supreme Court action banning prayers in schools. I think that, with the activity of some proponents for restoring prayer in the school, that there was an obvious conclusion which I viewed that any intent to come up with a moment of silence or meditation was aimed at providing those students who wished to pray an opportunity to do so.

I think there was an attempt to do that in a way that the language of the state Bill would not violate the Supreme Court decision.

Q Do you think that providing an opportunity or a moment of silence for contemplation and introspection would have a probable result in that some students would use that (p. 257) opportunity for prayer?

A I'm sure they would.

Q As a professional educator, do you have a personal opinion as to whether the moment of silence has any substantial educational value?

A I would not see substantial educational value, no.

MR. ALTMAN: Your Honor I recognize the Court's concern with moving on, and I know that Dr. Newbaker—I make an offer of proof that Dr. Newbaker is in a position to testify to many of the facts and conclusions that have been presented by other experts heretofore, such as the effect on teachers, the peer pressures, the divisiveness factors, whether this would have any calming or transitional purpose, et cetera.

I'm a little bit sensitive to the Court wondering whether you think this might be cumulative on those points.

THE COURT: Certainly it would be cumulative. I can't control the presentation of your case unduly. I think we are beginning to duplicate quite considerably.

MR. ALTMAN: Being sensitive to that, and I think we have covered those points, I have no further questions.

THE COURT: Good. Cross-examination.

CROSS-EXAMINATION

BY MR. ROBERTSON:

(p. 258) Q Dr. Newbaker, referring back to the documents that I believe you have in front of you pertaining to the resolution that accompanied the June 31, 1981, and delegates convention. You have an internal memo attached to that resolution?

A I don't recognize an internal memo.

Q No doubt mischaracterized by me.

Oh, that's interesting.

Doctor, my copy—

MR. ALTMAN: May I see that? We don't have that.

Q It has two pages attached to the resolution. Yours apparently does not.

A I have one single sheet with what would have been two pages, including our background discussion and recommendation.

Q The solution is that you have a Xerox on the back side.

A Yes.

Q Good. I think you testified that there was no educational value to 2197, is that correct?

A Well, I believe I said no sustantial educational background value.

Q Was it the position, or the New Jersey School Board Association, did they take an official position that there was no educational value?

A I can't believe that the action said that there was no educational value.

Q I direct your attention to the last paragraph of the (p. 259) discussion portion of the resolution. Would you read that to yourself?

My question: Does that paragraph refresh your recollection that even as to the legislation contained in 2197,

there were proponents in the communities that espoused or proposed this legislation as being helpful for the purpose of calming students and impairing an atmosphere of quiet and seriousness for the school day?

MR. ALTMAN: I think it's important to determine a time that this is supposedly being proposed.

MR. ROBERTSON: I will.

THE COURT: You can narrow it down later if you want.

A I think the sentence, as I read it, is that supposed secular purpose.

Q And where did that supposed secular purpose come from?

A I don't know, but I suspect that our staff had heard those references. But the fact that we used the language, the supposed secular service, cast a great deal of doubt as to the educational value.

And I think—if I may read into that my own conclusion, that this was attempting to justify an educational purpose for what was more clearly an intent to pass legislation for restoring prayer to the schools.

Q Did you say that in that memo?

(p. 260) A As I read it with the background that I have, it has that meaning to me.

Q Did you say it in the memo?

MR. ALTMAN: Objection. Argumentative.

MR. ROBERTSON: Excuse me.

THE COURT: I'll permit it. The answer seems rather obvious.

A I should answer?

THE COURT: Yes.

A The sentence says the supposed purpose is to calm students down and impart an atmosphere of quiet and seriousness to the school day.

This may be so, but it hardly seems like this type of program which is so important that it must be mandated statewide by the legislature.

Again, the paragraph goes on to say that there is no legislation needed for boards of education to take such action.

Q I'll pick up the quote.

"Even without this legislation, school districts across the state are free to adopt as a matter of local policy a period of silence for their schools provided it is intended and used only for the secular purpose stated above. There is no compelling need to mandate such a period in every school. The efficiacy and even the necessity to requiring such a period (p. 261) of silence is best determined at local level."

Accurate quote?

A Yes, sir.

Q Did you ever say there is no educational purpose in this legislation?

A We did not say that specifically.

Q Did you ever make a study to determine that there was no educational purpose in this legislation?

A Only insofar as our staff researched this matter.

Q Did you ever tell—

THE COURT: Let him finish.

MR. ROBERTSON: I'm sorry.

A We did not conduct any kind of formal study, at least the definition that I would require, a formal study.

Q You communicated this paragraph to your local school boards with one intention?

A With what intention is your question?

Q Yes, sir.

A With the intention of providing them with a recommendation with regard to this Bill, and also with regard to the resolution submitted by the Montvale board.

Q And with further advice that they should decide it for themselves?

A We said that it could be decided by themselves, and that is according to our School Board Association policy (p. 262) position is preferable.

Q Did any school boards adopt the moment of silence?

A I'm not aware of any.

Q Do you know of any school boards that had, prior to that resolution, adopted a moment of silence?

A I can't specifically cite any.

Q Doctor, isn't it fair to say that what your Association objected to was a state legislative mandate, period?

A We were opposed to the mandate, but more specifically, I think knowing the attitude of board members,

I would say the vast majority of board members agreed with the U.S. Supreme Court decision banning prayer from public schools.

Q But the power struggle between your Association and the legislature was also involved, was it not?

MR. ALTMAN: Objection. I didn't hear any testimony about a power struggle.

THE COURT: Let's find out.

A I'm not aware of a power struggle.

Our purpose is to represent our positions, and I think we have done that adequately in the past.

Q Right. And you did not want the legislature dictating to you or your delegates what should be done in the schools of New Jersey?

A I think there were two issues.

Q Well, fine.

(p. 263) THE COURT: Let him finish.

Q Please tell us the two issues.

A One would be we are always sensitive to the legislature mandating requirements to the local districts where they should have the prerogative to meet the constituency's need.

The other issue, I think, was a genuine concern for freedom of religion and separation of church and state.

Q So there were two issues. It was not a single issue resolution that we were dealing with here, is that correct?

A I think, if I read the resolution correctly, that the overriding concern of the Montvale Board of Education was the intent of A-2197 to establish prayer and silent meditation as a requirement in schools.

MR. ROBERTSON: No futher questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. ALTMAN:

Q Are you aware of any studies conducted by the New Jersey legislature as to the educational value of the proposed moment of silence?

A I'm not aware of any.

Q Are you aware of any testimony that occurred before the legislature by any educational experts or psychologists that the proposed legislation had educational value or disciplinary value?

(p. 264) A I'm not aware of any, and, in fact, I believe—I knew our Association and the teachers union and I believe other educational organizations opposed the bill.

MR. ALTMAN: Nothing further.

(Excerpts of Trial Testimony of Stanley L. Rosner)

MR. ROBERTSON: No recross.

THE COURT: All right. Thank you very much.

MR. ALTMAN: Dr. Newbaker, thank you.

(Witness excused.)

THE COURT: Call your next witness.

MR. ALTMAN: Dr. Rosner. I just need a minute to dig out from under the accumulation of paper here this morning.

THE COURT: Yes. We'll get him on the stand and sworn in.

THE CLERK: Step up there. Place your left hand on the Bible, raise your right hand.

STANLEY L. ROSNER, being first duly sworn, testifies as follows:

THE CLERK: State your full name.

THE WITNESS: Stanley L. Rosner, R-o-s-n-e-r.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. ALTMAN:

Q Dr. Rosner, would you tell us what your present position is?

* * *

(p. 268) Q So I take it that you instruct people that are going to work with children, and as you said, for child care. Do you teach psychologists to be?

A School psychologists, and I've also—I should indicate that I have taught at Loyola College in Baltimore, and I'm currently a visiting lecture at John's Hopkins University where I'm teaching courses in school psychology and learning disability.

Q You had occasion to examine what has been referred to as the Moment of Silence legislation?

A Yes, I have.

Q And at whose request were you asked to do that?

A At the request of Ms. McHugh from your office.

Q And did she explain to you the purpose that she wanted you to look at this statute for?

A Yes, she did.

Q What was that?

A To formulate an imperssion as to what this legislation would mean to youngsters with problems if it were to be enacted.

Q And have you reached an opinion as to the effect of the Moment of Silence legislation, were it to be enacted in the public schools, on a handicapped child?

(p. 269) A Yes, I have.

Q Would you tell us what that opinion is?

A If I may be permitted to make both a general and specific answer.

The general answer is that I think for handicapped youngsters the imposition of the moment of silence would represent an area in which they would have additional difficulty above and beyond the problems that they already bring to the school situation.

I arrived at that conclusion by attempting to come up with some generalizations about handicapped children, because in that category we are talking about a broad range of youngsters.

There are youngsters who are under the general label of being retarded, or intellectually deficient. There are youngsters who are under the general label of learning disabled. There are youngsters who are under the label of being socially or emotionally disturbed.

To attempt to come up with some understanding of all three categories I've put together what I think is a reasonable generalization as to the kinds of problems that those youngsters have that would interact with their being required to maintain a moment of silence.

They have problems in five major areas. The first problem, which has generally been noted both in the (p. 270) literature and in clinical practice, are problems with per-

ception. One of the most common perceptual problems that youngsters with learning and other kinds of difficulties have is the perception and regulation of time. That is, they tend not always to be able to put in order on when lunchtime comes, when dinnertime comes, how long an hour is, let alone how long a moment is.

So that if they were asked to maintain a moment of silence, for many youngsters with difficulty, that would be something that they would have problems with right from the start.

Q I take it that would create problems for the teacher as well, or whoever was supervising them?

A Well, the next several points point out the kinds of problems that it would create with a teacher.

Q Can I interrupt you for one second, and then I would like to continue what you're doing.

We seem to be assuming that these handicapped children are in the public school classrooms. Are they in a regular classroom?

A Well, I was—when I finished with this, I was going to move to the other reasons that I formulated the opinion that I did.

Q Go ahead with your reasons.

A The second problem that many of these youngsters have (p. 271) is with mobility. That is, by and large, they tend to have problems with maintaining adequate control over their behavior. The common term which is used to describe the problems that they have are hyperactivity.

If required to maintain a moment of silence with no direction to fill that moment, we very frequently find that

youngsters who are having problems get into hyperactive, unacceptable, unruly kinds of behavior, which would start off a day for them by putting them in opposition to what the teacher felt was appropriate classroom behavior.

The third area of difficulty that these youngsters experience is in terms of conceptual kinds of problems. It was my feeling, upon reading the law, that what it suggested this moment be filled with, that is, contemplation and introspection, was for many of these youngsters a rather high level construction, which I think they would have considerable difficulty dealing with.

So, rather than contemplating and introspecting, they would generally be reacting to internal stimulae to be impulsive or hyperactive, and as a result, again, come into opposition with a teacher.

The next area which I think is number 4, is the fact that by and large they have attention and concentration difficulties. They frequently have difficulty attending even to situations that have been structured to enable them to (p. 272) learn well. So, such an unstructured situation simply allows for greater wandering and would, in general, again, lead to their getting into behaviors which would put them in opposition to the teacher.

The last area, which is language development, is not one which I think specifically is weighed on by the legislation itself.

Now, the other area of thinking, which formulated my opinion about the fact that handicapped youngsters would have difficulty with the moment of silence, were that it would present a problem that there is both law and

regulations requiring that certain things be done for handicapped youngsters.

Q Law in New Jersey?

A Nationally, and so it holds for New Jersey as for all states.

One of the requirements is that all youngsters be provided with an appropriate education in the least restrictive setting. That is to say, that youngsters with problems are no longer contained in classrooms for just youngsters with problems. They are mainstreamed.

Frequently, being put into regular classrooms, which is what mainstreaming involves, is a burden for them in terms of holding their behavior together.

To introduce an additional exercise which would (p. 273) put stress on their ability to hold themselves together seemed to me to be an unnecessary kind of thing.

Secondly, the law requires that each handicapped youngster, or each youngster who is deemed to be exceptional, and put under the heading of special education, be provided with an individualized educational program. That is to say, a written document in which what the youngster requires is clearly and carefully spelled out step by step.

Most individualized educational programs involve some statements as to how to help the youngsters gain a greater sense of dealing with time, self-control and management within the classroom. So that while a moment of silence might be perfectly appropriate for one youngster at the beginning of the day, for many others it might not only be inappropriate, but it might be counterproductive to what the educational plan was formulated to produce.

Q Can you just elaborate on the effect of implementing this statute due to the interaction of the handicapped child with the nonhandicapped child in the public classroom?

A Okay. The issue of mainstreaming, which is becoming a very important one educationally as funding is reduced, puts youngsters with problems in regular classrooms to a greater degree than ever before.

They frequently continue to have the same kinds of difficulties that they have had in the special education (p. 274) setting. But for the most part, attempts are made to reintegrate them into the program in a way which is as careful and thoughtful as possible.

However, one of the things which they have difficulty with, as I indicated before, is maintaining control, staying on target, keeping from being distractable and impulsive and inattentive, and simply having a mechanical exercise at the beginning of each day which requires an empty moment of silence would, for many of these youngsters, as I indicated before, put them in a substance of being in conflict with what the teacher had requested.

Q Are handicapped children any more prone to teacher influence either direct or indircet than a nonhandicapped child?

A That would depend to a large degree on the kind of handicap that we are talking about. I think, in general, it can be stated that youngsters with problems, both intellectual and learning problems, frequently are anxious to please the teacher. Their anxiety to please the teacher is even more deeply felt than other children because of

their inability often to succeed in those areas which the teacher is expecting and which their parents are expecting.

The group of handicapped youngsters who would be most prone to being influenced by their teacher's behavior would probably be the youngsters toward the bottom of the (p. 275) intellectual range, that is, intellectually deficient or the so-called retarded population.

Q What about the interplay between the handicapped child and the nonhandicapped child in terms of peer influence?

A There again, I think that youngsters with problems in the school situation are—tend to be more likely to model from kids who they see as being more capable, more adequate, more successful, more achieving.

Q So I take it that if either a teacher or another nonhandicapped student were utilizing the moment of silence for prayer, the handicapped child might be more prone to follow his peer influence or teacher influence than another nonhandicapped child might?

A It would certainly provide handicapped youngsters with the opportunity to demonstrate to the teacher that they could do something which the teacher seemed to value.

MR. ALTMAN: I have no further questions of Dr. Rosner.

THE COURT: All right. Maybe we can finish up the cross before lunch.

(p. 276) CROSS-EXAMINATION

BY MR. ROBERTSON:

Q Doctor, I know you're reading from something. Have you prepared a report in connection with your testimony?

A No, just made some notes for myself so that I wouldn't leave out critical points.

Q Do you have copies of those reports, or were they provided—

A I just have the rough notes I made for myself.

Q Can I look at it for a second?

A Sure

MR. ROBERTSON: Judge, may I take lunch at this time to talk to Dr. Rosner? I haven't seen these notes.

THE COURT: Well, quickly talk to him now because I've got a schedule today that I have to keep.

MR. ROBERTSON: Fine.

Your Honor, if you don't mind, I would like to stand here to question him.

THE COURT: Sure.

Q You've listed here the areas that you have testified to on direct, perception, mobility, language, conceptual conduct?

A Underneath conceptual, the note that I have is concrete. That is, these youngsters tend to operate at a very concrete level which was one of my areas of concern in that what the law required was a rather abstract understanding of (p. 277) how to use that time.

Q Doctor, have you read the law?

A Yes.

Q Objectively, what does the law provide the child to do, objectively?

A To use that time for what's written here, a quiet and private contemplation or introspection.

Q Do you distinguish between objective and subjective?

A Sure.

Q Objectively, what does the law require the child to do?

A Be silent for a moment.

Q Can these children be silent for a moment?

A Some.

Q Is silence used to help them become accustomed to cognitive control?

A At times for some youngsters.

Q In other words, their ability to be appropriately silent is a drill that may be go through through with some youngsters?

A With some youngsters, yes.

Q Doctor, Mr. Altman asked you about the children's likelihood to imitate the conduct of peers.

A Yes.

Q I think your answer was that they who do in the mainstream context what they believed the teacher wanted them (p. 278) to do?

A Well, I understood the question to deal with the teacher, but the influence of peers would be a factor as well.

Q Is there anything about the moment of silence that would contribute to a greater immitation of peers?

A Simply the absence of other stimulae would, in general, lead to their attending to something around them. They have also been described as inattentive, and their attention tends to wander.

They would be more likely to attend to their surroundings at that point.

Q Would they imitate the behavior of their peers without the moment of silence?

A Quite likely in some instances, yes.

MR. ROBERTSON: No further questions.

THE COURT: All right. Any redirect?

MR. ALTMAN: No.

THE COURT: Thank you very much. You may step down.

(Witness excused.)

THE COURT: You can take your break. Do you want to stop now or go for ten minutes with your next witness?

MR. ALTMAN: For how long?

THE COURT: Ten minutes.

MR. ALTMAN: We might as well stop.

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(Excerpts of Trial Testimony of Thomas C. Thompson)

Thompson - direct

(p. 356) So one of the things we identified in the process of doing this, from both of those groups of people, was the fact that kids did perceive that they could—say if something was bothering them, that they could, in fact, say something to the counselor or say something to the principal in the school.

So what we decided to do was, in fact, then go to the counselors in the schools and give them a series of areas in which the moment of silence was imbedded as an area of concern, and ask them to list the areas of concern which students brought up.

We also then went to the principals and not asking them to do the same thing, but interviewing them around the issues that had been brought to them from students about the moment of silence and their perception on it.

Q Doctor, after you collected all this data, I assume you analyzed it?

A Yes.

Q And did you reach any opinions about the effect of the moment of silence?

A We reached several opinions about the moment of silence.

Q Could you give us those, please?

A Basically, the moment of silence appeared to be an event which was perceived by students basically as a period of (p. 357) silence and nothing else. It was used by students in different fashions, but the perception of it was a 60-second period of silence.

There was no evidence in the observations that we made from the students that it was perceived as an experi-

ence which would in some way facilitate or inhibit any type of religious activity in the school. There was apparently no perception by the students as a religious activity of same.

We found that the moment of silence seemed to have an effect which we—was later confirmed to us by the students, having the ability to help as a transitional tool between coming out of the outside world, the playgrounds and so forth, and acting as a traditional bit of environment morning ritual in terms of quieting the students down, settling them down in transitioning in for the day.

Q Did you find anything else about it? Was there anything else that the data showed you?

A The majority of students, about—I think it breaks down to about 51 percent, approximately, liked the moment of silence and perceived it as a period of time in which they could be quiet, think about what's going to be happening during the day, think about things, reflect on things, settle down. This was pretty much the tenor of responses that we got.

Q What you're saying to me is you actually found out what

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(p. 363) Q And did you notice anything different about that Act?

A Yes. It indicates that it's a moment for contemplation or introspection, which tends to be what the majority of our students indicate that they use it for.

Q Do you have an opinion as to what the effect that Act would have here in New Jersey?

A I assume that it would be—the effect of the moment of silence itself?

Q Yes.

A That would probably be similar to what it is in New Mexico.

Q Why is that?

A Children are, developmentally, basically pretty similar.

Q Doctor, in your observations of both in person and videotape, did you find any data that would suggest that there was overt prayer or objective prayer being used?

A We never saw any examples. The most you can say is that someone might close their eyes. Someone can put their head on their desk.

Whether, in fact, those people were engaged in prayer or not, because obviously we are finding from our sample that many of the people sitting in the classroom quietly were apparently thinking, and they can do this with their eyes open on.

(p. 364) The only thing that you might say in a quasi sense, if somebody put their head on a desk or closed their eyes, that's the closest thing you would have to a religious act.

Whether putting your head down and closing your eyes is a religious act or not, I don't know certainly. Certainly there was no indication on the students' part—I mean, very few of them who even liked it responded that they prayed during the time. Only one of them did pray during that time.

Q Doctor, does your test, or study, I should say, show or uncover or was it designed to uncover anxiety or coercion?

A Well, if you define anxiety or coercion as things that make people feel bad or uncomfortable, one of the items that we put in there, which is also a difference between the junior high and high school interview as opposed to the elementary interview, which was to—let's see, how do we word that here—when you feel good in school, when do you feel most comfortable? When do you feel bad in school? When do you feel most uncomfortable?

To look at, in terms of areas of anxiety, because typically if you ask students, are you anxious, especially in lower grades, you're not going to get much. Even in junior high when you ask people, do you feel bad at a certain time, or are you uncomfortable at a certain time—and we found

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Cross Examination—Thompson

(p. 395) A If you look at the issue of morality—

Q Can you answer my question directly?

THE COURT: Let him answer his way.

A First, there is no other empirical data with regard to the moment of silence. This is the study on the area of moment of silence.

Secondly, if you look at the issue of moral development of children and you look at the developmental literature,

one of them look at the fact that the basically moral development in children is pretty much similar cross-culturally in terms of research.

You don't find much advanced moral developments until you reach a higher age, and even at that point in time you tend not to see a really advanced moral development.

Q You don't believe, for example, that a child that comes from a home in Princeton where his father may be a chief executive of a corporation is going to view the moment of silence differently than a child that comes from a home in Appalachia and his primary concern is whether he eats in the morning.

A I don't know whether eating in the morning has an influence on the perception of moment of-silence, do you?

Q You're the expert. I don't profess to be the expert.

THE COURT: Gentlemen—please don't ask him questions. He can ask you questions.

* * *

(p. 404) A Yes.

Q Okay.

A That we were just limited—

Q What were those seven classrooms?

A Excuse me?

Q How many different schools did those seven classrooms—strike that.

How many different schools are there in Las Cruces?

A There are two high schools, I believe six junior highs, and I think there are 12 or 13 elementaries at that time. There may only have been five junior highs then.

Q So you had something like 20 schools and you had seven classrooms out of 20 schools?

A For the taping, yes.

Q You're not going to suggest those seven classrooms for taping were there for a representative sampling of all classrooms in the school system, are you?

A Yes, I would suggest that, yes.

Q How do you conclude that? You didn't even select the classrooms?

A I assume they were selected at random.

Q You assume it. I want to know what you know. On what basis do you assume it?

A I usually enter into a relationship with people that

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(p. 407) Q And you had two of those five geographical areas?

A Right.

Q And you don't know in fact with respect to those two schools what the socio-economic breakdown is within those schools?

A In fact, I know that the areas the schools draw from are mixed socio-economic level, including both barrios in our areas and also upper middle income areas, yes.

Q Did you make a study of that?

A It's very obvious. All you have to do is be in Las Cruces.

Q What about the other three that you didn't go in?

A What about them.

Q Are they mixed?

A No, they are not as mixed socio-economically.

Q They are not?

A No.

Q You didn't go in for them?

A No, not taping.

THE COURT: Mr. Altman, don't interrupt.

A We went into every school in Las Cruces.

Q For taping?

A No, no. For observation.

Q I'm only talking about taping. Do you understand that that's what we are questioning right now?

* * *

(p. 426) the data, look at all of the body of the data to see what questions we could or could not answer.

Q Okay. So once you had all this data, you would then have to look at it and bring your expertise to bear to make conclusions as to whether or not it was used for religious purposes?

A That's correct.

Q And could you tell me what religious academic training you have that gives you expertise in identifying what is religious activity?

A I don't know if I have any training to identify religious activity. I don't suspect it is really all that hard to identify, though.

Q Is that right?

A It seems so.

Q Do you know how an Orthodox Jew prays?

A No.

Q Do you know how a Shite Muslim prays?

A No, I do not.

Q Do you know whether there is any distinction among the Protestant denominations in terms of what is an acceptable form for prayer or not?

A In terms of acceptable form or human behavior associated with it?

Q An acceptable form for prayer. In other words, do you

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(p. 430) you didn't fence with me. There is nothing tricky or misleading.

THE COURT: Mr. Altman, I will do the instructing to the witness, not you.

If you have an objection, tell me.

MR. ALTMAN: I'm sorry, your Honor, yes.

THE COURT: Continue with your questions.

Q My question to you was, in fact, as much as 20 percent of the students in a given classroom bowed their heads in a manner that you interpreted as having a higher probability of being a religious act?

A Not that I interpreted. I said that could have a probability of being interpreted.

Q Doesn't it mean that you viewed it then as potentially a religious act?

A No. I simply said that it could be interpreted. That was the only behavior which could be.

Q Could be. Well, what made it possibly a religious act? Why did you conclude that it could be a religious act?

A Because probably bowing one's head and closing one's eyes is more religious than looking at the ceiling on a scale of one to ten.

Q That's the only reason?

A That's the only reason that I concluded.

Q That bowing one's head is more overtly a religious act

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(p. 445) Q One of the items was moment of silence, having a moment of silence?

A Correct.

Q And we commented on it, but the result of that question was that you determined that their attitude toward the moment of silence was basically neutral in terms of liking and disliking?

A Well, what we determined on the basis of the question, item number 13?

Q No, question 9. And 8 and 9 are, I guess, one question.

A Yes.

Q And you determined with regard to 13, number 13, having the moment of silence, that basically their attitude was natural in terms of whether they liked it or disliked it?

A Basically, what we looked for then is if the individual liked it, we inquired into what you liked about it, if you did not like it, what it is that you disliked. That's where we got the perception that about 50 some percent of the children, 51 percent, liked it and saw it as an activity which they were able to think and reflect.

Q About 37 percent said they hated it?

A I think it's actually 26 percent.

Q 26 percent said they hated it?

A They didn't say they hated it. They said they didn't (p. 446) like it. I don't think anybody hated it.

Q Some of them said, "It drives me crazy"?

A I think that appears you're talking about—yes, "It drives me crazy."

Q Doesn't that indicate anxiety?

A I don't think the individual meant it drove them crazy in the clinical sense. It was imbedded in the context of not liking to be quiet. It makes them feel very crazy to be quiet, I guess.

Q And feeling crazy isn't a feeling of anxiety?

A I don't know, or whether the individual simply wants to talk to their friends.

Q You had a second part of your questionnaire. For the benefit of the Judge, I have concluded all the questions that you asked in what you call the open-ended questions.

THE COURT: I can tell.

A You included them all in the open-ended.

Q You had a second set of questions, is that correct?

A No, basically the same questionnaire. Just it has a couple changes on it. In fact, I don't even know if it has the changes on it.

Q The second page here is basically the same question asked of junior high and high school students?

A Right.

Q You said the first part of the questionnaire was

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(p. 453) Q And it is your opinion that it will help focus a child from whatever was on his mind before the moment of silence to the school day. Is that essentially it?

A It was my observation and opinion that it seemed to do so, and that was confirmed by those individuals who responded in terms of why they liked it. They seeemed to also indicate that it was doing that in addition to the fact that also seemed to be the consensus with regard to teacher or principal's perception, especially at the elementary—some of the junior high level, although by the time you got into the later grades, there was less perception of it being a transitory tools.

Q Are you telling me what you perceived or others?

A The sources of my data also included the perceptions of others.

Q Do you have that data available?

A Probably it was written down. It may be available. It may not be available. I don't know.

Q I take it it's not here?

A No, it's not.

Q Well, in fact, you would recall that 47 percent of the teachers you interviewed were opposed to the moment of silence?

A I didn't interview any teachers.

Q That was part of the data communicated to you, wasn't

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(p. 458) in fact liked it seemed to use it in that fashion. That speaks for itself.

Whether or not it would be an effective tool to deal with children heavily anxious, I don't know. I doubt it, but I have no data.

Q Well, do you know that a child, for example, of young age can't even sit quietly for 60 seconds without considerable difficulty?

A In kindergaten age, it's very difficult. First grade is less. At the second grade it seems to be a very effective tool.

Q Wouldn't a child that finds difficulty in being silent for 60 seconds in the first grade, would that act in and of itself create anxiety for the child? I want to conform to the teacher's rules, the school rules?

A I don't know whether 60 seconds creates anxiety of having to be silent. I have no idea of that.

Q How about in the hyperactive child? He's told to sit silently for 60 seconds. Do you think he could do it?

A I would doubt it, if it's a child who is truly hyperactive, behavioral definition the child cannot sit still.

Q If he can't comply with his teacher's request, wouldn't that produce anxiety?

A I'm sure the child is so anxious anyway, that it would simply be one more source of anxiety, yes.

(p. 459) Q So it enhances anxiety.

How about the problem for the children—strike that.

Wouldn't that be a substantial problem for the teacher trying to enforce a hyperactive child to remain silent for 60 seconds?

A Sure.

Q You indicated you thought the results that you concluded—strike that—that the conclusion you draw from your study in Las Cruces, New Mexico would be equally applicable in New Jersey?

A Certainly they have a generalized ability because of the fact that we are dealing with children in a public school system. The public school systems are fairly well standardized in terms of education. Children develop mentally pretty much the same.

There are going to be other variables. If you want to find out exactly how, then you need to, in fact, do a very similar study here. Then you can replicate it.

Q Do you think the same holds true with regard to the children's perception of the moment of silence as a religious activity?

A It probably generalizes. If you want to know to the degree that it generalizes, of course, you would have to do the study.

(p. 460) Based upon the fact that the children are probably basically similar, since they are similar developmentally, biologically as organisms, yes, it probably does generalize.

Q Notwithstanding that 50 percent of the population of Las Cruces is Anglo, 50 percent is Hispanic?

A That's two groups. Certainly we know that they must be similar developmentally. Probably other racial groups are similar developmentally too.

Q You have to assume that with regard to how—whether or not a child would view the moment of silence as a religious activity, you have totally discounted their religious background?

A No. I do not feel it was important in terms of the perception of the moment of silence.

Q Nor the socio-economic background.

THE COURT: You're shaking your head meaning no?

A No. Yes. Sorry.

MR. ALTMAN: I have no further questions.

THE COURT: All right. This might be a good time then—

MR. MARINARI: I have no redirect.

THE COURT: All right. Then we can excuse you.

MR. MARINARI: Can we excuse the witness? He has to return on a midafternoon flight.

* * *

(p. 467) testimony before the Court today?

A Yes. Last spring I was asked by my superior, the superintendent of schools, Dr. Parnell, if I would meet with some lawyers who wanted to find out more about Sayreville, Sayreville's moment of silence.

Q And did you, in fact, meet with those lawyers?

A Yes, I did.

Q And do you know the names of those lawyers?

A Yes. I met with Mr. Marra and with yourself, Mr. Zoller.

Q How many occasions did you meet with us?

A Three times.

Q Mrs. Swenson, does the Sayreville school system utilize the moment of silence as part of its school activities?

A Yes.

Q How long have they been utilizing a moment of silence?

A I'm not up on the date, but I would say it must be 12 to 15 years that I have been doing it, and that it was required.

Q And do you, as a fifth grade teacher in that school system, observe a moment of silence in your classroom?

A Yes, I do, every day.

Q Do you know how it was that the moment of silence came to be introduced into the school system?

A The board of education passed a decision in this

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(p. 469) go about implementing the moment of silence in your classroom?

A Yes. At the point shortly after they have entered and taken care of routine matters, like putting books away or jackets away, and they are ready to start the school day, I call on them to stand and salute the flag. And after they have completed that, I ask them to sit and I ask them to close their eyes for our moment of silence. After a certain period of time, less than a minute, I would say, "All right, heads up, let's begin," something to that effect.

Q What is the reason for you instructing the students to close their eyes?

A Well, I teach fifth graders, and they are 10 going on 11. I thought that was the appropriate way to keep them from distracting one another so that they might have their moment of silence.

Q And could you give us specifically how long a period of silence it is that you observe in your classroom?

A Well, I would say probably most days it's 40 or 45 seconds. It's not a full minute.

Q What is it that you tell your students that they should be doing during this period of silence?

A I really don't tell them anything now because they have been observing it for so long. When it was started, I explained to my children the meaning of the word "meditation."

Q And what was the meaning that you explained to them?

(p. 470) A I said to them that meditation was private, serious thinking.

Q And what do you, as a teacher, do during this moment of silence?

A I supervise in the front of the room. I ask the children to close their eyes, but I do not close my eyes. I stand in a relaxed way and just observe the decorum of the classroom.

Q Do you have a view as to whether or not the moment of silence serves an educational purpose?

MR. ALTMAN: Objection. This witness was not identified as an expert witness.

MR. ZOLLER: She's not being offered as an expert witness.

MR. ALTMAN: She's offered as a fact witness. Her views would be as an expert.

THE COURT: I'll permit the question. Overruled.

Q You can answer the question.

A I think it's an appropriate, small formality that starts us off on the business of our school day, which is the children's learning.

Q And, by the way, is there any other times during the school day where you call for a moment of silence?

A Yes. Not calling it by that name, but I use silence as an occasional tool many times.

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(p. 473) Q Have you ever seen a student doing something during this moment which you would consider to have a outwardly religious meaning to it?

A Yes.

Q By that what I mean is folding their hands possibly or blessing themselves?

A Yes. I've seen children folding their hands, but I've never really thought of that as a religious act. But I have seen children crossing themselves.

Q And when this occurred, did the students ask you for permission to do these things?

A No, they didn't. And could I add that only the child doing it was aware of it because the other children had their eyes closed.

Q So when this was done by one child, you didn't notice that other children did likewise?

A No, no. And it is very infrequent. I can only specifically remember once or twice in 12 to 15 years.

Q Once or twice that this situation has ever arisen?

A That's correct.

Q Do I understand your testimony that way?

A Yes.

Q Have you ever noticed that during this moment of silence that students have a tendency to become anxious or inattentive?

(p. 474) A No, they look very relaxed to me.

Q Have you experienced any control problems or discipline problems in implementing a moment of silence?

A No, very little. Less than many other moments of discipline.

Q Has any student of your ever requested to be excused from the classroom during the implementation of this moment of silence?

A No, they have not.

Q Mrs. Swenson, do you have occasion to meet with the parents of your students on a regular basis during the school year?

A Yes. We have conference periods, quite extended ones, twice a year. We have PTA meetings probably six or seven times a year. And whenever a parent calls or I think I should be in contact with them. That would come up.

Q So you would then make yourself available if a parent deemed necessary to speak to you?

A Oh, absolutely.

Q And would you say that parents do on occasion, in fact, call upon you?

A Oh, yes. In our school parents are in close contact with the school very often calling and asking to have me call them.

Q Have you ever experienced an occasion when a parent (p. 475) addressed any concern to you with regard to the implementation of the moment of silence?

A Never.

Q That covers the full gamut of 12 years that you referred to earlier?

A That's correct.

Q Has any parent ever questioned you with regard to the educational purpose or utility of the moment of silence?

A No.

Q Have you had occasion to speak with your fellow teachers during the school day or during the school year even?

A Yes.

Q And do you do so on a regular basis?

A Sure. I see them every day.

Q And have you had occasion to speak to them with regard to the moment of silence in particular?

A Yes. Within the past year, I'm sure that the conversation came up. I think I said I know it is in the handbook that we should have a moment of silence. I'm still doing it in my classroom. I don't know if everybody does.

The teachers who were present at the lunch table said, oh, yes, we still observe the moment of silence.

Q So, to the best of your knowledge, the moment of silence is in fact being implemented throughout the school?

A I believe so, yes.

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(p. 498) A My observations are very informal, sporadic. It may be walking down the hallway and stopping at a classroom door during the occasion when the teacher is conducting the opening exercise.

My sole purpose is to see the opening exercises are being conducted. If I'm there at the moment of silent meditation, I see children sitting at their seat silently. At the conclusion the teacher begins the school day.

Q Have you ever been advised by a teacher that a student has objected to the moment of silence?

A No.

Q Have you ever told your teachers or suggested to your teachers that the moment of silence is to be construed as a mandatory time for the allowance of prayer in the school?

A No.

Q Would you say that one of your functions as the principal of the school is to make yourself available to parents?

A Oh, yes.

Q And in what way do you make yourself available?

A Conferences, appointments. They are free to telephone me at any time when they have problems. PTA meetings.

Q On any occasion in the 14 years that you have been a principal, has any parent ever come to you and complained of the implementation of the moment of silence?

(p. 499) A Never.

Q Mr. Singer, do you have a view as to whether or not the moment of silence has an educational purpose?

MR. ALTMAN: Objection?

A Yes.

THE COURT: Overruled.

Did you say yes?

THE WITNESS: Yes.

Q Please tell us what your view is.

A It is a situation in which we can bring children into a controlled atmosphere from an out of school situation which is variable. It also gives them an opportunity to sit down briefly and reflect on their self-worth, on improving themselves and what they would like to accomplish during that school day.

Q Do you reside in Sayreville?

A Pardon me?

Q Do you live in Sayreville?

A Yes, I do.

Q How would you describe the ethical—the ethnic makeup of Sayreville, population?

A Mixed. I would say, for the most part, first or second generation Americans with central European ancestry, Scandinavian, Southern European, African, Asian, Hispanic.

Q Do you have black Americans residing in town?

* * *

(p. 505) Q Today?

A Right.

Q And you identified somebody there by the name of Mr. DiPoalo?

A Right.

Q And he is a member of the school board?

A Yes, he is.

Q My associate took a note. I want to know if you heard it said by Mr. DiPoalo. When he was guestioned by the reporter, he said, "People better do a little praying." Is that what he said? Did you hear that?

A That's what I heard him say.

Q What was he responding to when he said people better do a little praying?

A We don't advocate that. That was his version.

Q That was his version of how people should respond to the policy adopted by the school board?

A The policy adopted by the school board is a moment of silent meditation.

Q Is it your testimony then that you didn't understand what Mr. DiPoalo was referring to when he said, "People better do a little praying"?

A I'm sorry. Would you repeat that question?

Q Do you—

A I'm having difficulty hearing you because of the (p. 506) acoustics.

Q When Mr. DiPoalo said—the member of the school board said, quote, unquote, "People better do a little praying," what did you understand him to be referring to at the time he made that statement?

A That an individual can pray if he chooses to.

Q Well, doesn't "People better do a little praying" sound mandatory to you?

A I don't take it that way.

Q He was referring to the use of the moment of silence, was he not?

A I can't really say that's what he was doing.

Q Well, when this Bill—strike that.

When the policy was adopted in September of 1969, it provided for a two-minute period of meditation for any child who wants to pray, correct?

A I read that for the first time two days ago.

Q But that, indeed, was what the policy was?

A Right.

Q And in September of 1969, were you a principal?

A Yes, I was.

Q Incidentally, this very motion, the motion to adopt this policy of mandating two minutes of meditation to allow children to pray was moved by Mr. DiPoalo, was it not?

A According to that, yes.

(p. 507) Q Now, I assume this is the same Mr. DiPoalo that was on the film?

A The board of education, yes, that one.

Q And you indicate that in 1978 the Exhibit D-12, which is entitled, "Opening Exercises," was an amendment to the existing moment of silence?

A Actually, what that was was very shortly after we received the memo about the two-minute period of silent meditation, we did have one concern. The concern was two minutes is too long to have a period of silent meditation.

Q Very soon after?

A This concern came from teachers and principals. We met together and it was determined that we were not to worry about having it a full two minutes, but leave it up to the discretion of the classroom teacher as to how long it would be.

Very shortly after that policy was put out, the initial one—

Q The initial one?

A We had gone to a moment of silence meditation, which was much shorter than two minutes.

As I stated before, in 1978, all school districts were mandated to put their policies in writing and have them available to their personnel. That is the one that we had been following a lot longer than since 1978. But now it is in (p. 508) writing. That's why I said officially.

Q But as the Judge pointed out to you, this opening exercise, or this policy identified as opening exercise, know as policy number 808 says, "Opening exercises may

also include the singing of patriotic songs and a moment of silent meditation," correct?

A Correct.

Q Did anyone assist you in giving interpretation to that language?

A No one has questioned that.

Q Did you ask the superintendent what that meant?

A No, I had no reason to.

Q You concluded, however, that apparently you instructed your teachers that on the basis of that policy it should be viewed as mandatory rather than discretionary?

A Would you repeat that again, please?

Q You instructed your teachers on the basis of this policy that they must conduct a moment of silence in the morning?

A I never said they must conduct a moment of silence. Opening exercises consist of the salute to the flag, singing of a patriotic song and the moment of silence.

Q And you told them that—I take it then you told your teachers that those opening exercises should contain all three of those components. Mrs. Swenson indicated from time to (p. 509) time—

THE COURT: Excuse me. Was the answer yes?

THE WITNESS: Pardon me?

THE COURT: Was your answer yes to that question? Did the opening exercises, they must contain all three of those components?

THE WITNESS: Not must contain, I'm sorry. They may contain all three. They can contain all three.

Some teachers choose not to have a patriotic song.

Q Do some teachers choose not to have a moment of silence?

A No.

Q Are they permitted to choose not to have a moment of silence?

A Pardon me?

Q Do you permit them to choose not to have a moment of silence?

A No.

Q So you mandate the moment of silence. You, personally.

Particularly new teachers when they come in for instruction at the beginning of the year?

A When a school teacher came for instruction, I would tell her what the opening exercises consist of. If they choose not to it according to that policy, they wouldn't (p. 510) have to do it. But I have never had that situation arise.

Q Okay. I'm not talking about whether it happened or didn't happen.

Taking this policy then, you're now saying that you would interpret D-12 to be that if a teacher did not want to have the moment of silence in her classroom, you would allow her to exercise her discretion not to conduct the moment of silence?

A According to that policy, I probably could.

Q Were you present at the meeting of the board of education for Sayreville when they adopted this policy?

A No.

Q Did you ever testify before them or—

A I never attended a board meeting.

Q I take it you had no input into changing this policy from the previous policy, or you don't know exactly what their thought processes were?

A No.

Q All right. Never mind. I'll withdraw the question.

Do I understand that when the policy in '69 was adopted to have two minutes of meditation to allow a child to pray, that the only way in which that policy was communicated to you was by the superintendent calling you up?

A No. The superintendent sent us a directive in writing informing us—

(p. 511) Q And this was it?

A That was not the directive.

Q Yesteday when you were preparing your testimony or gathering information in anticipation of this appearance, did you attempt to look up that directive?

A No. That would have been a memo. I wouldn't have that in my possession anymore.

Q You wouldn't keep it?

A That's 14 years ago.

Q Did this come from your school, or did it come from the board of education? Do you know?

A That was requested from the board of education secretary by Miss McHugh. It was also requested of me by Mr. Zoller.

Q And the board forwarded it to you?

A Exactly. This is why two days ago was the first time I saw that document.

Q So then you have no written record of what the superintendent said to you about the implementation of the moment of silence some 14 years ago?

A Other than the receipt of the memo that informed us that we were to implement that into our opening exercises.

Q I'm saying, you don't have that memo?

A I do not. I'm just remembering that this is the procedure.

(p. 512) Q You're basing it on recollection from 14 years ago?

A Right.

Q No, I take it that if a teacher wished to adopt a prayerful posture in her class or actually pray silently during the two-minute moment of silence, you would indicate to them that that was permissible?

A Contrary to the way I may feel personally about that, I'm afraid I would have to go to that teacher and tell her that she's not to do that.

Q That she's not to do that?

A Yes, right.

Q She couldn't even—not each silently?

A During the moment of silence.

Q Then is it your interpretation that the two minute moment of silence cannot be utilized by a teacher for prayer?

A What I'm saying here that if a teacher chooses to use it that way, and does it in such a way where it is not visible, or can be interpreted by anybody watching her that she is doing it, I wouldn't know that it's going on. But if there is any physical act or anything like that where she is doing something that's gong to indicate that she's praying, and you can see it and you can tell it, then I am bound to tell her that's not the purpose of a silent moment, a momen. f silence.

Q Well, where did you derive your impression as to what (p. 513) this moment of silence would permit or not permit? The original one said it was for the express purpose of allowing prayer. This one doesn't say prayer or not prayer.

How did you conclude that prayer would be inappropriate for a teacher during this period?

A We have been using this moment of silence for 14 years. Over the 14 years, for the past five or six years in our school, what we think of it as a moment of silence.

No advocation of prayer or anything.

Q But from what did you derive your authority or the opinion that you would tell a teacher that she could not display any overt or outward signs of prayer?

A I would have to tell her that, yes.

Q I understand that you would—you said you would tell her that. But why would you tell her that? That's what I'm asking you.

A For the mere fact that perhaps because of the age of the children that she is responsible for, it may leave an impression on them.

Q What kind of impression?

A They may copy her actions.

Q I take it a child, however, you would permit to pray and make manifest signs of prayer?

A I would. I would be very hesitant to go up to a child and tell him he's doing something incorrectly.

(p. 514) Q Do you agree with Mrs. Swenson's interpretation, or is it your interpretation of the moment of silence that students are required to remain quiet, first of all, that they have to be quiet?

A Right.

Q That they would be seated?

A Yes.

Q Eyes closed?

A Yes.

Q Is that yes to be seated, or yes to eyes closed or both?

A Repeat the question again.

Q Okay. I think we got past—they would have to be quiet. And I ask you if they would have to be seated?

A Yes.

Q And eyes closed?

A Yes.

Q Now, what is there in this policy that requires the children close their eyes. What is there from the board of education, the board of education who adopted a policy in D-12 that you're enforcing that requires the children to close their eyes?

A Nothing. But I see no harm, really, in their closing their eyes, except that perhaps when they close their eyes they are not going to see what each other is doing during a (p. 515) moment of silent meditation.

Q So that you have individually mandated that they close their eyes?

A No. The teachers in my building have the right to go ahead and institute the moment of silent meditation as per their procedures.

Mrs. Swenson chose this method. It works.

A first grade teacher may ask her children to just put their heads down on the desk and think about what they would like to do during the day for a few brief moments.

A kindergarten teacher may introduce it the same way.

A sixth grade teacher may require that her class remain standing for a few seconds right after the singing of the patriotic song and ask them to sit down.

There basically is no standard procedure as to how it must be done is.

Q I see. So a period of time is not mandated in your school?

A No. As I stated before, the two minutes that was mandated at the beginning of this—at the beginning of the moment of silence, in 1969, we felt was too long.

We also don't have stop watches where we can say, here, you start now, and two minutes later say, everybody stop.

(p. 516) So we were given permission to leave it up to the discretion of the classroom teacher as to how long it should be. It ranges anywhere from, say, five seconds to 45 seconds.

Q You told Judge Debevoise that you thought the principal change or amendment that was achieved by number 808 was to reflect that the moment of silence had been reduced from two minutes to a lesser period of time as you just stated?

A Officially. Because we have been doing it way before that.

Q Okay. I understand that.

And I take it then that you didn't think there was any principal change in the operation of moment of silence other than that?

A No, not really.

Q So although the first moment of silence expressly stated that the two minutes of meditation should be used

in the morning for any child who wants to pray, you nevertheless concluded that D-12 did not reflect a change of policy in that regard?

A What I'm saying was that the original memo that we received in 1969 made no reference whatsoever as to us giving the child an opportunity to pray. It just gave us the information that the board of education adopted a resolution to provide for 'wo minutes of silent meditation.

Q Did a teacher ever ask you—strike that.

(p. 517) How long have you been in—you've been the principal of the same school since 1969?

A I've been in education for 29 years in the district.

Q Have you been at this particular school since the original policy was adopted?

A Since 1969?

Q Yes.

A I started in 1955.

Q There at the same school?

A Right, in the same district, not the same school.

Q And is it your testimony that there has been never any discussion between you as principal and teachers as to whether the moment of silence should be used for prayer?

A No, because we knew it couldn't be used for prayer. It wasn't supposed to be used for prayer.

I never had that document in my possession.

Q So your interpretation at the moment of silence, as you just stated, is that it could not be used for prayer?

A Silent meditation. Do not advocate prayer.

Q Did you ever tell that to any of the teachers, any of the new teachers when they came in?

A Do not advocate prayer.

Q Not to use it for prayer?

A Exactly.

Q Did you instruct them as to how they should respond to (p. 518) students if students asked them if they could use that opportunity for prayer?

A Yes.

Q And I take it that they were told that they could tell the children, yes, they can pray?

A The child may do whatever he wishes.

Q You said that—just a couple more questions for you—that you perceived the moment of silence as having a beneficial effect in creating a controlled atmosphere. Don't you have a controlled atmosphere in effect as the—once you commence that opening exercise when the teacher tells the students to rise and to do the Pledge of Allegiance?

A Yes. Perhaps I should have worded that as just a continuation as a beginning for the control of the class. The children are coming in from a playground. Some of them are coming in from different home environment. They are coming into a classroom procedure where they will all be together for the remainder of the day.

The moment of silence is an opportunity for them to sit quietly, stand quietly and reflect on what they expect to achieve during that school day.

Q Of course, before they begin to reflect on what they are going to do the rest of the day, the teacher has brought them to attention. They are standing. I presume the Pledge of Allegiance is conducted in quiet. The teacher leads the (p. 519) exercise. People verbally say the Pledge of Allegiance, face the flag, maybe go through the ritual of putting their hand to their heart, the children, correct?

A. Correct.

Q I assume it is not a time for rowdiness or for misbehavior?

A Correct.

Q Then there may be a patriotic song?

A Correct.

Q And this may have lasted several minutes now?

A And it's always a good idea to have a few moments of silence before you go into the day. I believe in that.

Q Did you do that before the—did you have a few minutes of silence at the time—strike that.

I take—I assume you were a teacher in the school system and an administrator when it was common practice for the children to have the Lord's Prayer?

A Before this was implemented?

Q Yes. Do you remember a time when it was common practice in every school—

A I remember I was teaching in the school room when we had to read a selection from the Old Testament. We had to repeat the Lord's Prayer, salute the flag and sing the National Anthem.

Q And when they completed that, did you require your (p. 520) students to have an additional minute or two of silence?

A I can't recall exactly, but I'm sure there were moments when I did ask the children to sit down and be quiet.

Q Moments during the day when you thought silence would be appropriate?

A There were moments during the day when I had to ask them to be silent also.

Q I assume it wasn't structured or regimented where you told them to be silent at the same time every day?

A Pardon me?

Q That's all right. I'll withdraw the last question.

You said that you would like to see the children use the moment of silence to reflect on what they wished to accomplish during the school day. Have you ever promulgated a memorandum to your teachers that they should tell the children that they should use this moment of silence to reflect on what—reflect on themselves and about what they think of themselves and what they would like to do with their school day or achieve in their school day?

A No. I don't believe I ever issued a memorandum. That may have been discussed at a faculty meeting.

Q So a —

A That's one of the things they could do.

Q So I assume the children are left to their own devices to conclude that as as you have, that that would be a proper (p. 521) utilization for the moment of silence?

A One of them, right.

MR. ALTMAN: No further questions.

THE COURT: Any redirect?

MR. ZOLLER: No redirect.

THE COURT: Thank you, Mr. Singer. Good. (Witness excused.)

THE COURT: What is your schedule now?

MR. ROBERTSON: I have an expert witness, your Honor.

THE COURT: Will he be lengthy?

MR. ROBERTSON: I'm going to try to compress it. I think that I can do that, and I would like to get him finished today because we have another expert tomorrow morning. We can take our afternoon recess—

THE COURT: I would just as soon go right through because I have another matter that I have to hear.

MR. ROBERTSON: Fine.

THE CLERK: Place your left hand on the Bible, raise your right hand.

ADAM SCRUPSKI, being first duly sworn, testifies as follows:

THE CLERK: State your full name.

THE WITNESS: Adam Scrupski. S-c-r-u-p-s-k-i.

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(p. 532) were able to gather from your research?

MR. ALTMAN: I object. The testimony to the extent that it contains data that he might abstract from it and utilize, I suppose if we laid a proper foundation, he could be asked about it.

But his testimony, in general, is consistent with his theoretical approach, is not in my mind a proper question.

THE COURT: I'm going to sustain the objection perhaps on other grounds.

I don't know that I can define in a precise way Mr. Singer and Dr. Thompson. It seems to me there were a number of conclusions which could be drawn from each. I think it is a little broad to have a broad, general question as to whether his approach is consistent with theirs.

MR. ROBERTSON: I'll refine the question.

THE COURT: Why don't you just get what his conclusions were?

Q Doctor, before I ask you—I'll ask you the question.

As a result of your research and review of the literature, have you formed an opinion as to the pedagogical functions that a moment of silence can perform?

A I think it has implications for the pedagogical function of the school, of a beneficial sort.

Q Can you explain carefully and as completely as—

A It seems to me that the moment of silence as a, shall (p. 533) we say, a supplement, if you will, to morn-

ing exercises, or as a form of opening exercise constitutes a boundary between the world of not school and that of school.

Assisting in the defintion of the school situation as one demanding of and involving more serious, concerted effort than is the case in peer group relationships, familial relationships and other social context in which even children engage.

Q How would the moment function to establish this boundary?

A The connotation of silence in our society, and I believe other societies and cultures as well, seems to be one of seriousness and solemnity.

The social context in which silence tends to be in order include courtrooms, libraries, hospitals, battle monuments, places of worship.

Silence then is associated with seriousness. Including a moment of silence at the outset of the school day, then, tends to define the school situation as one of seriousness. Where there might be a blurring of the demands of the school situation or the definition of the school situation, and the social context and normative patterns and expected behavior of peer group, the relaxed demands, let us say, and expectations of family, the moment of silence seems to me can successfully prevent the diffusion of such (p. 534) orientations, such normative patterns on the classroom, and support then the definition of the classroom as a place where serious academic work goes on under the direction of a teacher.

In a sense, it seems to me that the idea of teacher role, the rights and obligations of the teacher, vis-a-vis students, the possibility of exerting rigorous demands on the student, is in that sense associated with the definition of the situation, that is, as Willard Wohler said, "The role sticks to the situation as the answer sticks on the question."

Q Who is Willard Wohler?

A A sociologist of education, whose book written in 1932 is considered a—I suppose you have to use that—a classic. But it's still an extremely valuable collection of insights with respect to the structure of the school and teachers and student relationship.

Q Professor Scrupski, how would you characterize the moment of silence from an analytical standpoint?

MR. ALTMAN: I don't know what that means.

A I'm not sure either.

Q I'll rephrase it.

What role does the moment of silence serve? You talked about boundaries. How does it serve to create boundaries?

(p. 535) A As a repeated ritual, as a kind of resocialization phenomenon, or socialization phenomenon. It defines the situation.

Q Could you describe what you mean by a ritual?

A A ritual is an act repeated regularly in similar fashion in terms of similar stimulae.

Q Doctor, why wouldn't prayer serve the same function?

A A particular prayer?

Q Yes, sir.

A A particular prayer would be offensive to the variety of student personnel that constitute the school's clientele.

Q Were you a teacher when the practice was to recite a prayer in the schools?

A That's right. I taught from 1954 through 1959 when the opening exercises were as they were just described a few minutes ago, a verse of the Old Testament without comment plus the Lord's Prayer.

Q Have you had occasion to focus on the utility of prayer as this ritual that you speak of?

A Prayer—prayer served, it seemed to me, as a traditional form of ritual, a similar function. It probably serves a similar function traditionally in other institutions in our society.

Educationally, however, the nature of education, the nature of the school, its influence on children, it seems

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(p. 542) boring, and even a weekend indication of participation in clubs and extracurricular activities, which might indicate an embracement of the activity and a kind of extra, or even significant educational experience.

Q How, in your opinion, would the moment of silence perhaps serve to reverse that trend?

A Only by daily—only by daily connoting the classroom as a place where serious business takes place, more serious than that which takes place on the playground, in the corridor, in shopping malls and so on.

Q Professor, are you familiar with the practice of the flag salute in the American classroom?

A I understand it's part of New Jersey state school law still, as far as I know, to have the flag salute.

Q Why couldn't that serve to establish the boundary?

A It's hard to say, but I'm unconscious in my observations, and I'm sorry, I can't reflect on my observations of the particular school, of a certain weakening. This can be derived from other theorists and observers of those centrally administered, centrally located, allegiance in a differentiated society such as the United States is coming to be, including the flag as a symbol.

It seems to me the flag is not functioning as effectively as it used to be as a collection point for the allegiance of students and as an affiliation, in a sense, as (p. 543) signifying a kind of affiliation with the public educational scheme, as I think it used to, at least to people who went to school earlier suggested.

It doesn't mean it can't still be used and that it might not come again to occupy its former status.

MR. ROBERTSON: Judge, if I can have a moment?

THE COURT: Sure.

(Pause.)

MR. ROBERTSON: Judge, I have no further questions.

THE COURT: All right, cross-examine.

CROSS-EXAMINATION

BY MR. ALTMAN:

Q Professor, you indicated that the first time the moment of silence was proposed or in existence at the time came to your intention was through a friend making some inquiry of you, is that correct?

A That's right.

Q Do you recall whether that was?

A I think it was sometime early last spring.

Q So that would be the spring of 1983 you're referring to?

A 1983. I could be wrong on the date.

Q Was it your impression that when this friend approached you, the time was subsequent to the enactment of this law?

(p. 544) A Yes.

Q And I take it also that were you aware that it was also subsequent to a challenge to the enactment of this law?

A I believe I was aware that the law had been, what would you say, enjoined?

Q Yes.

A Prevented from taking effect. I think I knew that at the time.

Q And you said something about this friend being a representative of a state legislator or the state Legislature?

A He had an occupational position associated with the committee, I think, on education. He happened to be, though, a good friend. He happens to be a neighbor of mine in Hightstown. He was a neighbor of mine in Middlesex County when my foot—I happened to have a couple of toes amputated and I couldn't walk. He drove me back and forth to Rutgers. We have had a long, close relationship.

In the process of talking with him, he happened to ask me.

Q You seem to be somewhat concerned that maybe there was something wrong?

A The implication is that there is—something underhanded about this.

Q No, don't worry about that. That is not the implication at all.

(p. 545) Who is this person that you're referring to? There is nothing wrong with him talking to you?

A John White.

Q Is he a staff person to a legislative committee?

A Uh-hum.

Q Okay. Do you know whether it was the Assembly Education Committee or the Senate Education Committee?

A I don't know. I thought there was a joint committee.

Q They may at times sit as a joint committee. But they are separate. That's okay.

Was he a member of that staff prior to the enactment of the legislation?

A I believe so, yes.

Q Did he ever discuss that proposed legislation with you prior to its enactment?

A No. I didn't see him for awhile. John's relationship and mine has been off and on, off and on.

Q So, the first time that he asked you if there might be a secular purpose for this law, was after the law had been adopted and enjoined?

A Yes.

Q So I take it that he was seeking you out to find out if there could be some legitimate secular—strike legitimate—some secular justification presented for, or in defense of this particular law?

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(p. 561) moment of silence has nothing to do with this diminishing of clarity that you say has occurred over time, is that correct?

A Yes.

Q And, therefore, what I'm really trying to understand from you—I understand you're saying that one moment of silence in your mind might have some value. But there would be many other ways that might be better employed to achieve clarity of purpose for students in the educational process, wouldn't there?

A I think that we have to be—a concerted effort made by school personnel and supportive personnel to clarify roles, yes.

What I'm suggesting, however, is that a moment of silence can assist in this. It would be a step in the right direction.

Q Okay But you're not putting some—you're not in any way attempting to quantify the amount of value this would have?

A No.

Q In fact, one thing that might be a lot more helpful would be identifying what actually is the cause of a particular student's lack of clarity and trying to eliminate that cause.

A When you talk about a particular student, you're dealing with the psychologist's domain. We are speaking of

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(p. 603) newspapers in dissemination of this information?

A The conclusion really was that we needed a multiple approach of sources to reach children; that we couldn't rely on newspapers as a primary source if we want to get information to them about X issue.

Q Professor Aumente, have you reviewed the collection of newspaper articles that has been admitted as plaintiffs exhibits?

A Yes, I have.

Q Have you drawn any professional conclusions as to the utility of those articles in determining or measuring public perception?

A Yes. I think that they are an interesting batch or —of a piece of information. But I think within the context of my interest and what I was asked to look at within this case, it is only a blip on a screen. It is a very small fragment of what is out there.

I'm only talking about—this is not an exhaustive study of newspapers that we were talking about before in the state of New Jersey or that reach the state of New Jersey. I would probably give you the same answer, and that is, it is only one fragment. It is not the whole array of mass media that, in fact, is reaching the people.

Then I can talk more specifically about the articles I looked at, the 62 articles. But it is a fragmented (p. 604) piece.

Q Professor Aumente, can you tell me how many print sources are represented by plaintiffs exhibits?

A I have a little problem with this in that I was getting this in waves, and, also, finding that when I did the list, I found several articles that were repeated in the list of 57 articles that were there originally. Total items I worked with—I counted 57 and 5, the 5 being given to me on Wednesday. So that I'm using 62 as my universe, a pretty small universe, but that's what I had to work with.

Q Can you tell me how many print sources are represented by those 62?

A Well, they are all print. The breakout of the 62?

Q How many newspapers?

A Oh, I'm sorry. I count 11 newspapers. Other than the Philadelphia Inquirer and the New York Times, all New Jersey based. So we are talking about 11 papers, two out of state, nine state papers.

Q And that is in comparison to how many print sources, how many newspaper sources in New Jersey?

A We are talking about 33 or 34 dailies, 33 or 34 Sunday papers. We are talking about at least 300 weekly papers, plus the papers on both sides of the river. This is 11 papers out of—I haven't done the total, but four, 500 at least.

Q Professor Aumente, have you had a chance to review the

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(p. 613) the elements of that story?

These involve a whole range of measures. They involve the—is it a byline story? Is it a prominent story on the front page, or one of the break pages? Is it a multiple column story? Is it a photograph story, a wire story? These things carry different values.

Then you have to talk about the contents of the story itself in terms of way the lead is focusing the whole story. You get into the body of it.

In order for me to tell you how someone perceives something, I have to know this because I even start asking them how they perceive it. The next thing is that I cannot take this batch of material and whatever it is, whether it is videotapes or paper, paper sources, and say, okay, this stuff came into the state of New Jersey. Therefore, the people in the state of New Jersey have been absorbing it.

You do need some kind of a polling concept, a question concept, one-to-one observation with human being to human being to decide exactly how much of this they use. There are a variety of survey methods to do this.

There are things called focus groups that have been most effective in the past, and that is to take a group of readers and let them sit down and carefully read a paper, and then to be questioned on what they read in that paper and what they valued and to read the context of it. It is very (p. 614) artificial to take a batch of clippings—we don't live like this, I, for one, don't—in the space of 1982 and 1983, travel up and down throughout New Jersey grabbing these clippings and then incorporating them into my perception.

I'm only in one part of the state and I only read a certain kind of paper. So it is important to have this kind of focus group discussing it. This is what we have read and this is how it affects us.

There are also—there is the problem of what people think they read or think they saw versus what they actually do. Sometimes if you call someone up and ask them to say, have you read this or not, that's a good indicator, but you may have to go beyond that and actually probe into that in terms of the depth of knowledge on something.

Again, I apologize for the long-windedness of this, but it's basically breaking to the point of at least being able to ask the right questions.

Getting back to your question. How do we measure, you know, how people, in fact, would perceive the issue based on this kind of exposure, we are just coming up to that point of, okay, we have this whole content identified. We then are starting to do the opinion polling and everything else to get a better sense of it. But it is that kind of process, unless you want to do a quick and dirty, and you'll get the results of a quick and dirty if you do that.

(p. 615) Q Professor Aumente, during the course of your scholarship, have you become familiar with studies of mass media impact on behavior?

A Yes.

Q Assume for the purposes of this question that we do know what the public perception is by whatever accurate means are available to measure it. Would such a finding permit one to predict people's subsequent behavior?

A No.

Q Can you explain that?

A If I quantified what was available in the media and then took the next step of establishing with some degree of accuracy who uses the media and how, that still does not tell me how behavior is affected in the sense of are values made or changed or are attitudes made or changed? It is another level of observation or research that has to be done.

Q How would such research be done?

A There are a variety of methods. They are within the media field, within the media effects field.

There is a history of analyzing the mass media effects that go back to 1910. If we took a time line on them, 1910 to 1983, you would find that this variance, from 1910 to 1940 there was a school of thought that said the mass media had a tremendous impact on attitude and value. And this was the so-called bullet or hypodermic theory, and that is, you (p. 616) give the mass media—you give someone a jolt of mass media and you immediately start acting differently and behaving differently.

A lot of this came out of the studies that were done of propaganda, propaganda analysis after World War I.

Then in the '50s and '60s there was a shift away within the communication theory field where other studies were done in terms of impact of mass media.

As they start dong analysis of things like the impact on elections, the media impact on elections, finding that there was a divergence between the degree of impact, degree of media exposure and the actual impact or the

change of behavior. Then there was a shift towards a real downward sense of where the media was affecting.

It seems to be climbing back up again since the 1970s and 1980s, some of the studies done on violence on television. So we are at a point now where basically if you're looking at the field, the field probably would have mixed opinions, would be five to six opinions as to how important the mass media are.

We would probably be saying that you have to look at the total culture. Gerber is a good example, who basically says you have to not look only at the message, but the context of the society and the elements taking place within it.

These kinds of activities are now at play. If I

• • •

(p. 647) do you on occasion go to Trenton?

A Yes. I have an office in Trenton and I go regularly to Trenton.

Q Do you follow issues of public concern or interest to your constituents?

A Yes, I do.

Q In that regard did you follow Assembly Bill 1064?

A Oh, yes.

Q In what capacity did you follow it? Did you appear at—give testimony or anything like that?

A I didn't testify on this particular bill. What I did primarily for this case, was my observation of both the Assembly and Senate override sessions after the Governor's veto.

Q Did you appear at any committees?

A Not on this Bill.

Q But you did appear at the veto override?

A Yes, I did.

Q Do you remember what date that was?

A I made some notes on December 16th, the day the Senate overrode the veto. I dated the note so I can be sure of that.

Q That was December 16, 1982?

A That's true.

MS. McHUGH: Judge, I would like to have this marked as an exhibit.

(p. 648) THE COURT: What is the number?

MS. McHUGH: I think it's 80, Judge.

THE COURT: All right, P-80.

(Exhibit marked P-80 for identification.)

Q Reverend Sarfaty, you indicated that you followed Assembly Bill 1064, and that you appeared at the Legislature on the veto override, is that correct?

A That's true.

Q And can you tell me on the occasions when you were present there in the Senate or the Assembly on the veto override, whether or not there were any views expressed by Assemblyman Adubato?

A Yes, Senator Adubato, dealing with the issue of the state and religion, thought it would be a good thing if the state would subsidize parochial education, and that this Bill was a good step in that direction.

Q Were those remarks made on the floor?

A They were made on the floor for everybody to hear. I know Assemblyman Adubato's voice. His seat is under the balcony. I didn't see his face, but I know his voice.

Q How about Senator Dumont? Did he make any remarks? And if so, what were those remarks?

A Senator Dumont—

Q Excuse me, Reverend. Are you looking at some notes?

A Yes. I'm looking at the notes that I made on that (p. 649) occasion.

Q Are those the notes that we have had marked as Plaintiffs' Exhibit 80? Let me show you this exhibit.

A Yes. You have the original and I have a photocopy.

Q Reverend Sarfaty, can you testify from recollection, or do you have to rely upon those notes in order to give your testimony?

A Oh, I rely on the notes for specific wording, but I do remember the positions that struck me enough to write down what they were saying.

Q Could you then tell us—if you have to rely upon your notes, go ahead—what Senator Dumont said, if he said anything with respect to Assembly Bill 1064?

A He was for override. But the specific thing that impressed me was that he thought this kind of ceremony in school would cut down crime and disruption, which he was against. He suggested, which was of interest to me, that the Senate, in considering the override, shouldn't be rigid on matters of church and state.

Q Did he elaborate on that point or not?

A He made a comment about aid to private schools. Apparently it didn't disturb him as much as it would have disturbed us. That was all that I recall his saying.

THE COURT: Cut down crime and what?

THE WITNESS: He said it would cut down crime and (p. 650) disruption.

Q You've indicated, Reverend, that it didn't apparently disturb Senator Dumont as it would have disturbed you. What do you mean by that?

A We have a position on the separation of church and state that we take from a religious perspective; we also understand to be the policy of our government as interpreted by the developing doctrine in the Supreme Court.

Senator Dumont wasn't quite as concerned about mixing up church and state, religious and secular practices as we are.

Q How about Senator Cardinale, did he make any remarks or express any views with respect to Assembly Bill 1064?

THE COURT: Who is that?

THE WITNESS: Cardinale, the dentist, said that: We know what the people want. The implication of that being the people wanted the Bill to be overridden. They wanted the veto to be overridden.

He asked rhetorically whether the members of the State Senate were the servants of the people or the courts.

He was pretty clear that he took a public mandate to be more significant than the position of the courts. He did indicate he thought this Bill was a compromise and it ought to be sustained against the Governor's veto.

Q How about Senator Brian Kennedy? Do you have any (p. 651) recollection of any statements made by Senator Kennedy?

A Yes, I do, because I got to know him pretty well, especially in debates over the subject away from the Assembly or the Senate.

He said that: Nobody knows what the kids are doing, but he hopes they are praying.

Q You've indicated that you have debates outside of your appearance at the veto override with Senator Kennedy?

A Yes.

Q With respect to this issue?

A Yes.

Q Prior to the adoption of the statute in question?

A No. As a matter of fact, our debate was over WOR (radio) in New York after the override.

He then went on to explain what he understood the original doctrine of separation of church and state to be, set in an 18th Century context, and applied that there wasn't any development of significance to it, from the initial effort to prevent establishments of religion in the colonies. And he felt, therefore, that the override ought to be knocked down.

Q Reverend, during the debates on the veto override, do you recall whether or not there were any discussions of any substantial nature concerning the pedagogical objectives or purposes of Assembly Bill 1064?

A No, there weren't. There were no discussions that I (p. 652) recognize as related to pedagogy. The only one was a kind of social control argument that Senator Dumont used.

Q Could you characterize, then, for us, what the general tenor of the discussion or debate was with respect to the veto override?

A The override was substantially defeated, that is, the veto was defeated so—

Q Could you characterize the debate or discussion?

A Well, the debate was, was it prayer? Should it be prayer? Was it going to be good for the kids, particularly in terms of bringing order to a presumed chaotic school system.

Senator Feldman argued the school system wasn't chaotic, or in decay, was his word. But the debate was: Did we need this thing to change the climate and life of our school system?

The majority of the Senators felt we did. As far as I could see, they really didn't think any prayer issue was relevant one way or another so long as it had this effect.

For instance, Senator Paolella suggested that the Bill would support discipline and morality. Those were his exact words, saying that it wasn't necessarily a bill that would create prayer in the public schools anymore than smoking marijuana necessarily leads to hard drugs.

Q With respect to the position that has been adopted by the New Jersey Council of Churches, did you bring a copy of (p. 653) that position paper with you?

A Yes, I gave one to you and I have one in my briefcase.

We have a dual position that emphasizes the right for free exercise of religion, which might allow in a given cir-

cumstance the use of the public schools with the same kind of freedom that the Latin Club would have for a student led prayer group. Also, on the other hand, it strenuously objects to any conduct of religious exercises by the secular authorities, which would include the schools.

MS. McHUGH: Judge, I would like to have marked for identification the document reflecting the position of the New Jersey Council of Churches. It will be P-81. I would like to show it to the witness.

THE COURT: All right, yes.

(Exhibit marked P-81 for identification.)

MR. ROBERTSON: Judge, I haven't seen a copy of this document.

MS. McHUGH: I haven't either.

THE COURT: It can't be very momentus.

MR. ROBERTSON: I'm not going to interrupt, but I would like to read it.

THE WITNESS: It is very short, your Honor. We deliberately made it for communications.

THE COURT: Go ahead and read it.

Q Reverend Sarfaty, I would like to show you what has (p. 654) been marked as Plaintiffs' Exhibit 81 and ask you if that's the position paper to which you just referred?

A This is the position paper I drafted to suinmarize our position and took to our board of the dated evening, the 25th of January, 1983, where it was adopted by the

board as policy, and we used it to communicate succinctly our position to the people in our churches and to the press.

Q You've indicated that you communicated this position to the people in your churches?

A Yes. We have a mailing list of several sorts of people. One is all of the clergy, 3500 churches that constitute our 15 denominations, and then we have other shorter lists of people who have special interests, including interests in public affairs.

Q So you communicated back and forth between your organization and the various churches that make up your organization?

A Yes. There are some 15 public issue committees in the various denominations that constitute the Council. Part of my job was to be in communication with those committees as well as the bishops and executives of the 15 groups.

Q Would you describe yourself as at least one source of information for various constitutents of these churches?

A Yes. It is more than a casual issue. It is a key issue for me to be in touch with the people that constitute

* * *

(p. 656) JAMES CONNERTON, being first duly sworn, testifies as follows:

THE CLERK: State your full name, please.

THE WITNESS: My name is James Connerton, C-o-n-n-e-r-t-o-n.

DIRECT EXAMINATION

BY MS. McHUGH:

Q Dr. Connerton, what is your present position?

A I'm the executive director of the New Jersey Education Association.

Q What is the New Jersey Education Association?

A It's an organization of 117,000 members who work in the public schools of New Jersey.

Q Do you represent teachers basically, or—

A We represent all school employees. We have approximately 84,000 teacher members and the remainder are either bus drivers, cafeteria workers, secretaries and retired teachers.

Q Dr. Connerton, you've been asked to testify with respect to Assembly Bill 1064 which is known as the Moment of Silence statute. Are you familiar with that statute?

A Yes.

Q Doctor, did your organization take a position with respect to Assembly Bill 1064?

A We took a position opposed to the enactment of the (p. 657) bill.

Q Pardon me?

A We took a position opposed to the enactment of the Bill.

Q Doctor, do you have a lobbyist who works in Trenton?

A Yes. Five full-time lobbyists and then our president and I, myself, are also lobbyists.

Q In that regard, Doctor, do you follow legislation that's going through the Legislature, whether it's one House or another?

A Yes, we do.

Q And with respect to the position that you adopted on 1064, did you send lobbyists to various education committees and other floor debates on that Bill?

A Yes. We monitered all the debates.

Q And did your lobbyist speak with legislators and convey your position?

A Yes.

MS. McHUGH: Judge, I would like to show the witness an exhibit, the position paper that I believe has been premarked. I just want to find the number.

MR. ALTMAN: Your Honor, I think we omitted to have 81—which I think you ruled in evidence, but it hasn't been marked.

MS. McHUGH: Judge, referring to Plaintiffs' (p. 658) Exhibit 68, the position paper of the New Jersey Education Association. I would like to show this to the witness.

Q Dr. Connerton, I would like to show you what has been marked for identification as Plaintiffs' Exhibit 68 and ask you if that's the position statement that the NJEA adopted with respect to Assembly Bill 1064?

A Yes, it is.

Q What is the position of the NJEA with respect to this Moment of Silence statute?

A We were opposed to the Bill and and this position statement was made available to all legislators.

Q Why are you opposed? Could you tell us?

A We perceive it to be a back door approach to bringing prayer into the schools.

Q You indicated that you conveyed this position to various legislators, is that correct?

A That's true.

Q And did you do that before the override? In other words, while the Bill was going through its committee hearings, et cetera?

A Yes, we did.

Q And as expressed in that particular document that has been marked as P-68?

A Yes.

Q Would various legislators have received copies of that (p. 659) document?

A Yes.

Q Doctor, would you have conveyed your position as it's reflected in P-68 to various members of your organization, that is, your teachers and your cafeteria workers?

A We communicate with our members regularly. Every member receives a newspaper monthly and a magazine monthly. It is through those publications that we carry the word to the individual member.

We also have a local leaders' mailing on a weekly basis which keeps our people more current.

Q So each of your 117,000 members will be receivers of information on a regular basis from you?

A Yes.

MS. McHUGH: Judge, I would like to have one more item marked as an exhibit.

THE COURT: What is that?

MS. McHUGH: A sheet from the NJEA review dated February, 1981, just a single page. It would be marked for identification as P-82.

(Exhibit marked P-82 for identification.)

MR. ROBERTSON: Judge, we haven't received a copy of this before.

Judge, I would like a proffer.

MS. McHUGH: It does deal with a moment of

* * *

(p. 661) Yes, go ahead.

Q Dr. Connerton, I would like to show you what has been marked as Plaintiffs' Exhibit 82 and I ask if you can identify that?

A It is taken from our NJEA review, yes.

Q Doctor, is that the magazine to which you referred in your testimony?

A Yes, it is.

Q That would be the magazine that would be received monthly by your constituents?

A Yes.

Q Have you had an opportunity to review the article that appears on there with respect to the moment of silence or the meditation statute?

A No, but let me do that quickly.

Yes. Okay.

Q Have you had an opportunity, Doctor?

A Yes.

Q What is that? What does it say, Doctor?

A Well—

Q Basically, briefly.

A It refers to an earlier proposal for a three-minute period of silence, and we state our opposition to it or the grounds that it would amount to mandating prayer in the public schools.

(p. 662) Q I see, Doctor. Is this the kind of thing that you were referring to, that you would be communicating to your various members? For example, did you communicate this kind of thing with respect to Assembly Bill 1064?

A Yes.

MS. McHUGH: Judge, I have no further questions of this witness.

THE COURT: All right. Let's see if Mr. Robertson has any questions.

MS. McHUGH: I would like to offer P-82 in evidence.

THE COURT: I'll admit it in evidence as typical of what the New Jersey Teachers Education Association did.

(Exhibit marked P-82 in evidence.)

THE COURT: Any cross-examination?

CROSS-EXAMINATION

BY MR. ROBERTSON:

Q Doctor, on direct examination you were asked whether you communicated with legislators your feelings with regard to 1064. Do you recall that?

A Yes.

Q Did you personally have any communications with any legislators?

A I did not.

Q So all of the testimony that you just previously gave

* * *

PLAINTIFFS' EXHIBIT 55, GOVERNOR THOMAS H. KEAN, LETTER TO THE GENERAL ASSEMBLY

STATE OF NEW JERSEY

EXECUTIVE DEPARTMENT

December 6, 1982

ASSEMBLY BILL NO. 1064

To the General Assembly:

Pursuant to Article V, Section 1, paragraph 14 of the Constitution, I herewith return Assembly Bill No. 1064 without my signature.

This bill requires New Jersey public schools to conduct a one-minute moment of silence at the beginning of each school day to be used solely at the discretion of the individual student for quiet and private contemplation or introspection.

I am concerned that this bill violates the Establishment Clause of the First Amendment of the United States Constitution which provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

The Fourteenth Amendment applies this proscription to the states.

On October 7, 1982, Federal District Judge Morton of the Middle District of Tennessee struck down a Tennessee statute which provided "a period of silence not to exceed one minute of duration . . . [to] be observed for meditation

or prayer or personal beliefs." In using the three-prong test set forth by the United States Supreme Court in determining whether State action violates the Establishment Clause, Judge Morton found "that a moment of silence in and of itself is nondiscriminatory and may serve a secular purpose in aid of the education function." Yet, in analyzing the constitutional question, the Federal Judge found that while meditation and reflection can be viewed as carrying meanings that do not touch upon religion, individual terms within a statute cannot be construed in an abstract sense or in a vacuum. He reviewed all the terms together (including prayer) and concluded that the legislative purpose was advancement of religious exercises. Judge Morton did not stop at this point and he went on to say at best the statute was ambiguous, and as such the court had to consider the underlying legislative history.

All courts faced with these types of statutes look to the legislative history in determining their constitutionality. Judge Morton looked with great diligence to the record of debate upon the statute in the Tennessee Houses. He found that the overwhelming intent among the legislators supporting the bill, including the sponsor, was to establish prayer as a daily fixture in the public schoolrooms of Tennessee. Even if that was said to be passed off as political rhetoric, Judge Morton found it was rhetoric clearly inconsistent with standards set in place by the Constitution, and therefore, reflected upon an inappropriate secular purpose.

Public statements of New Jersey Legislators likewise reveal a constitutionally impermissible motive. Legislative discussion in the Senate revealed that the bill's adoption would mean "bringing prayer back into the schools through

the front door." One proponent of the bill said the restoration of prayer in the schools would result in fewer problems in classrooms and that the bill would not harm any school-age child, but rather, it would restore the child's faith in his creator.

Putting the constitutional issue aside, the necessity for this type of State-imposed mandate must be addressed. The bill in essence is a mandatory/voluntary minute of silence. New Jersey public school teachers do not need a legislative mandate of one minute of silence in order to maintain order in their classrooms. Rather, teachers already have the discretion to silence their classes for one minute, five minutes or twenty minutes as they in their wisdom choose. I prefer to leave it to the discretion of individual teachers to decide *if* their students need quiet time for contemplation and introspection and *when* their students may participate in such sessions.

The voluntary aspect of the State-imposed mandate also bothers me for I am not sure what children who voluntarily choose *not* to participate in this moment of silence are able to do. Are the children permitted to make noise or leave the room? Guidelines are not set up in the bill.

I respect the sponsor's zeal and conviction in obtaining passage of A-1064, but I nonetheless must return it without my approval. It is unlikely that the bill could pass constitutional muster, and teachers currently have the authority to call for moments of silence for introspection if such a period is deemed necessary.

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:
/s/ W. Cary Edwards
Chief Counsel to the Governor

PLAINTIFFS' EXHIBIT 56,
NEW JERSEY SENATE ROLL CALL

1982 SESSION

YEA	N-V	NAY
Bassano		•
•Bornheimer		
•Bubba		
•Cardinale		
Caulfield	•	
•Codey		
•Connors		
•Costello		
•Dalton		
DiFrancesco		•
•Dorsey		
•Dumont		
•Ewing		
Feldman		•
•Foran		
•Gagliano		
•Gallagher		
•Gormley		
•Graves		
Gregorio	•	

1982 LEGISLATURE

YEA	N-V	NAY
Hagedorn	•	
•Hirkala		
Hurley	•	
•Kennedy		
•La Rocca		
Laskin		•
•Lipman		
•Lynch		
•McManimon		
•O'Connor		
•Orechio		
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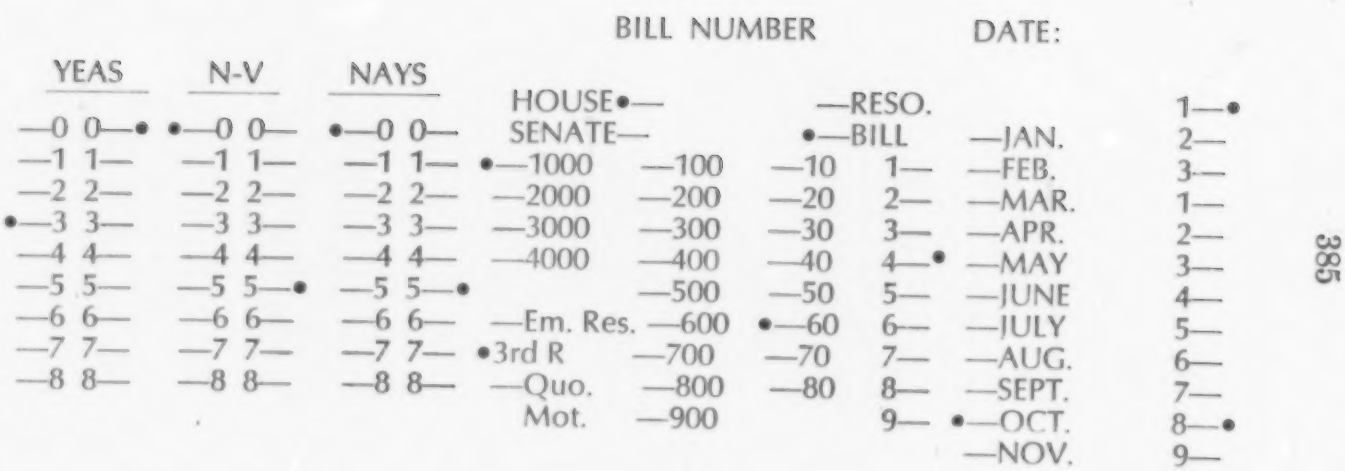
Rand	•	
•Rodgers		
•Russo		
•Saxton		
Stockman		•
•Vreeland		
•Weiss		
•Zane		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PLAINTIFFS' EXHIBIT 57,
NEW JERSEY ASSEMBLY ROLL CALL

REGULAR SESSION — 1982 LEGISLATURE

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•Adubato			•Kosco		
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•Bocchini			•Marsella		
Brown L.		•	•Matthews		
•Brown W.			Mazur		•
•Bryant			McEnroe	•	
•Charles			Meyer	•	
•Chinnici			•Miller		
•Costa			•Muhler		
•Cowan			•Muziani		
•Daverin			•Naples		
•Doria			Ogden		•
•Doyle			•Otlowski		
•Felice			•Palaia		
•Flynn			•Pankok		
•Fortunato			•Paterniti		

•Franks
•Gallo, D.
Gallo, T. •
•Garvin
•Gill
•Girgenti
•Gorman
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•Hardwick
•Haytaian
•Hendrickson
•Herman
•Hollenbock
Jackman •
•Janiszewski
Kalik •
•Karcher
•Kavanaugh
•Kelly
•Kern

•Patero
Pellecchio •
•Pelly
•Perun
Riley •
•Rocco
Rod •
•Schuber
Schwartz •
•Shusted
•Smith
Thompson •
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Weidel •
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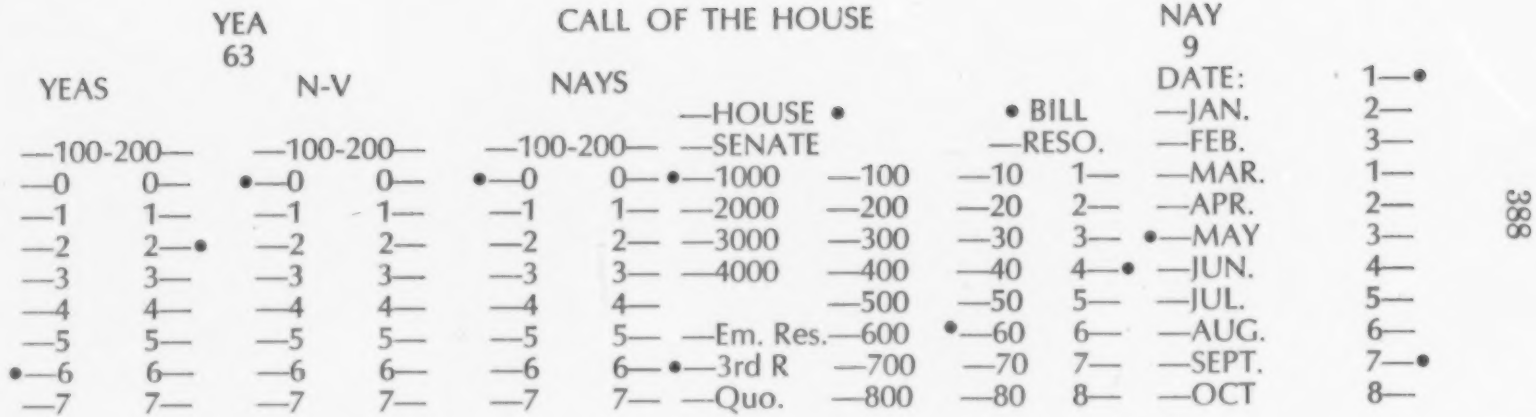
•Wright
•Zangari
Zimmer •

AUTHOR ..... SUBJECT A 1064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CALL OF THE HOUSE
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PLAINTIFFS' EXHIBIT 58,
NEW JERSEY SENATE ROLL CALL

1982 SESSION — 1982 LEGISLATURE

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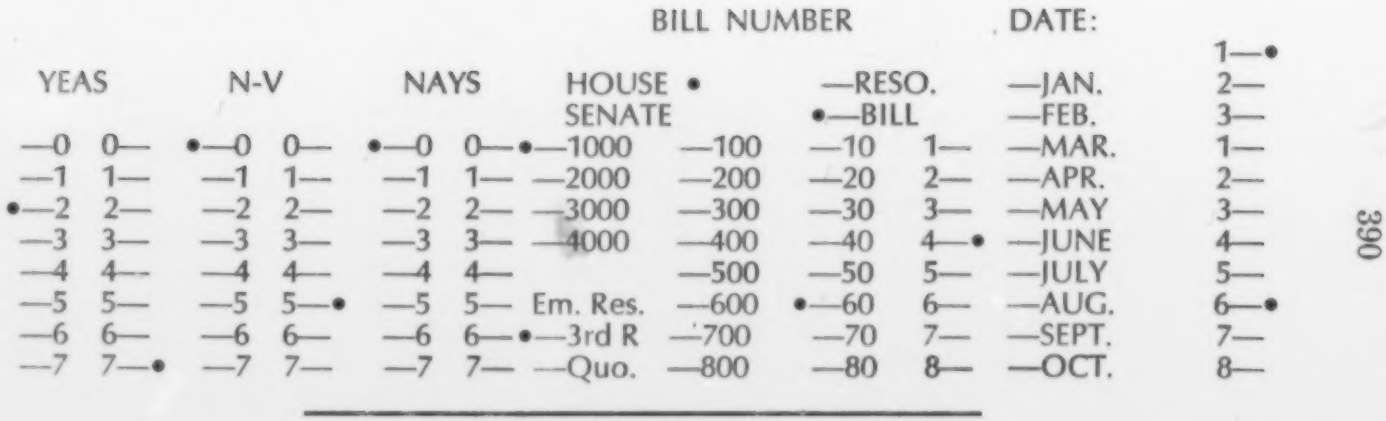
Bassano		•	•Hagedorn		
Bornheimer	•		•Hirkala		
•Bubba			•Hurley		
•Cardinale			•Kennedy		
Caulfield	•		•La Rocca		
•Codey			Laskin		•
•Connors			•Lipman		
•Costello			Lynch		•
•Dalton			•McManimon		
DiFrancesco		•	•O'Connor		
•Dorsey			•Orechio		
•Dumont			•Paolella		
•Ewing			Rand	•	
Feldman		•	•Rodgers		
Foran		•	•Russo		
Gagliano		•	•Saxton		
•Gallagher			Stockman		•
•Gormley			•Vreeland		
•Graves			Weiss	•	
Gregorio	•		•Zane		

A 1064 — 27-8 Override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PLAINTIFFS' EXHIBIT 59,
NEW JERSEY ASSEMBLY ROLL CALL

REGULAR SESSION — 1983 LEGISLATURE

YEAS	N-V	NAYS	YEAS	N-V	NAYS
•Adubato			•Kosco		
Albohn		•	LaCorte		•
Baer		•	Lesniak		•
Bennett		•	Littell		•
Bishop		•	•Markert		
•Bocchini			•Marsella		
Brown L.		•	•Matthews		
•Brown W.			Mazur		•
•Bryant			McEnroe		•
Charles	•		•Meyer		
•Chinnici			•Miller		
•Cooper			•Muhler		
•Costa			•Muziani		
•Cowan			•Naples		
•Deverin			Ogden		•
•Doria			•Otlowski		
•Doyle			•Palaia		
•Felice			•Pankok		
•Flynn			•Paterniti		
Fortunat	•		•Patero		
•Franks			•Pellacchia		

(Columns continued on next page)

YEAS	N-V	NAYS
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Gill		•
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•Kavanaugh		
•Kelly		
Kern		•

YEAS	N-V	NAYS
•Pelly		
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Schwartz		•
Shusted	•	
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Thompson		•
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Wright		•
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AUTHOR .....

OVERRIDE VETO
SUBJECT A 1064

YEA
57

CALL OF THE HOUSE

NAY
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—2	2—	—2	2—	—2	2—	—2000	—200	—20	2—	—MAR.		1—
—3	3—	—3	3—	—3	3—	—3000	—300	—30	3—	—APR.		2—
—4	4—	—4	4—	—4	4—	—4000	—400	—40	4—•	—MAY		3—•
•—5	5—	—5	5—	—5	5—		—500	—50	5—	—JUN.		4—
—6	6—	—6	6—•	—6	6—	—Em. Res.	—600	•—60	6—	—JUL.		5—
—7	7—•	—7	7—	—7	7—•	—3rd R	—700	—70	7—	—AUG.		6—
						—Quo.	—800	—80	8—	—SEPT.		7—
										—OCT.		8—

PLAINTIFFS' EXHIBIT 63, GOVERNOR CAHILL VETO OF ASSEMBLY BILL NO. 597, 3/8/71

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
March, 8, 1971.

ASSEMBLY BILL No. 597

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(a) of the Constitution, I herewith return Assembly Bill No. 597, without my approval, for the following reasons:

Assembly Bill No. 597 would supplement chapter 36 of Title 18A of the New Jersey Statutes for the purpose of authorizing, at the opening of the school day in each public school classroom, "a brief period of silent prayer or meditation with the participation of all the pupils therein assembled." Furthermore, this measure provides also that the silent prayer or meditation sought to be authorized "shall be considered as an opportunity for silent prayer or meditation on a religious theme by those who are so disposed, or a moment of silent reflection on the anticipated activities of the day."

This bill is a *verbatim* copy of Assembly Bill No. 640 (1968) and Assembly Bill No. 146 (1969), which were returned to the Legislature by Governor Hughes without his approval.

The First Amendment to the United States Constitution provides, in part, that:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . "

These two clauses, the "Establishment Clause" and the "Free Exercise Clause" apply to the several states by virtue of the Fourteenth Amendment to the United States Constitution.

The United States Supreme Court in *Engel v. Vitale,* 370 U.S. 421 (1962) and *School District of Abington Township v. Schempp,* 374 U.S. 203 (1963) has found statutory provisions providing for a voluntary daily program of denominationally neutral prayer and bible reading and recitation of the Lord's Prayer in public schools to be unconstitutional.

Patently, what is proscribed by the Establishment Clause is not the use of any particular form of prayer, but rather any establishment by the state of a religious or devotional exercise in connection with the operation of the public school system. A basic principle which has emerged from the pertinent cases is that the guarantees of the First Amendment concerning religion are observed best by "wholesome neutrality" on the part of the state toward matters sectarian. That is, not to say that the state must be hostile toward religion, but rather steer a careful course between the constitutional prohibition against establishment on the one hand and the constitutional guarantee of free exercise on the other.

This bill which authorizes teachers to conduct a brief period of silent prayer or meditation . . . with the participation of all the pupils therein assembled, invites the interpretation that it is an effort to circumvent court decisions prohibiting religious exercises in public schools. The language of section 2 of the bill that it is not intended to be, and shall not be conducted as, a religious service or exercise does not alter the meaning of the language of the bill which suggests the idea of schools conducting religious exercises. The responsibility for authoritatively interpreting the Constitution rests with the Judiciary. To the extent that this bill would circumvent the decisions of our Courts, it usurps judicial authority and violates the First Amendment of the U.S. Constitution. Insofar as the bill provides for a brief period of meditation, it is unnecessary since there is presently no provision of law which prohibits individual teachers or school authorities from holding moments of silence in the classroom.

No decision of the United States Supreme Court rendered subsequent to the veto of A-146 (1969) has altered constitutional doctrine announced in *Engel v. Vitale,* 370 U.S. 421 (1962) and *School District of Abington Township v. Schempp,* 374 U.S. 203 (1963).

I must conclude, accordingly, that Assembly Bill No. 597 (1970) suffers the same infirmities as its predecessors and must likewise be returned to the Legislature without my approval.

Respectfully,

[SEAL] /s/ WILLIAM T. CAHILL

Attest: *Governor.*

/s/ JEAN E. MULFORD,

Acting Secretary to the Governor.

PLAINTIFFS' EXHIBIT 64, GOVERNOR BYRNE'S VETO OF ASSEMBLY BILL NO. 648 (OCR), 3/3/78

ASSEMBLY BILL No. 648 (OCR)

STATEMENT

I am filing Assembly Bill No. 648 (OCR) in the State Library without my approval.

Under the provisions of Article V, Section 1, Paragraph 14(b) of the Constitution, this bill does not become a law if it is not signed within the 45-day period, Sundays excepted, folowing the adjournment *sine die* of the Legislature. In these circumstances there is no provision for a veto, but I deem it to be in the public interest to state my reasons for deciding not to sign the bill.

This bill would require that, in each public school classroom, the teacher must, at the opening of school upon every school day, conduct a brief period of silent meditation with the participation of all the pupils therein assembled.

Legislation similar to this is in place in other states including Connecticut, Pennsylvania, Massachusetts and Arkansas. The Massachusetts statute has been upheld by a Federal district court. Notwithstanding the existence of such other statutes, it appears arguable that the United States Supreme Court could find the statute unconstitutional as a violation of the Establishment Clause or the Free Exercise Clause of the First Amendment. However, if a court were to find the statute constitutionally acceptable, the question becomes, "What purpose is served by this legislation?" If the few moments of silence indeed do not constitute prayer, neither can they realistically serve as moments when children can truly "meditate" and consider their thoughts. And what is the teacher to say when a child asks what he is to do with his moment of silence? I noted with interest the specific response which the court in the Massachusetts Federal court case found acceptable. The teacher in response to such a question from the child, is to say: "We are dong this in compliance with State Law. Any other questions you have should be discussed

with your parents or with someone in your home." A child who is not properly advised at home will be at a loss to understand this directive. And even the child who is advised at home to pray during this period must wonder at the meaning of this terse explanation of some State-imposed requirement to keep still.

It is very important to remember that any teacher can currently require the moment of silence meditation this bill mandates for children at the beginning of each school day. Some teachers can effectively and sensitively ask the children in their classroom to stop and reflect for a few moments. For others, a State-imposed requirement that they keep their classes quiet for a moment simply to be "in compliance with State law" will only breed disrespect for the teachers, the State, and most distressingly, for the value of such moments of silent reflection. This bill sets down an absolute mandate for a moment of silence at the beginning of each day. I prefer to leave it to the discretion of the teacher to decide if he or she can convey to the children the value and comfort of such moments of silence, either for prayer or otherwise.

Accordingly, I will file Assembly Bill No. 648 (OCR) without my approval.

Respectfully,

[SEAL] /s/ BRENDAN BYRNE,
Governor.

Dated: March 3, 1978.

* * *

PLAINTIFFS' EXHIBIT 65, GOVERNOR BYRNE'S VETO ON ASSEMBLY BILL NO. 2197 (OCR), 5/4/81

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

May 4, 1981

ASSEMBLY BILL NO. 2197 (OCR)

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14(a) of the Constitution, I am returning Assembly Bill No. 2197 (OCR) without my approval because I believe it is either unconstitutional or unnecessary.

Respectfully,

/s/ Brendan Byrne
GOVERNOR

Attest:

/s/ Harold L. Hodes
CHIEF OF STAFF, SECRETARY

PLAINTIFFS' EXHIBIT 67, THE NEW JERSEY COUNCIL OF CHURCHES RELEASE

THE NEW JERSEY COUNCIL OF CHURCHES
116 North Oraton Parkway - East Orange,
New Jersey 07017 - (201) 675-8600
176 West State Street - Trenton, New Jersey 08608 -
(609) 396-9546

For Release Jan. 17, 1983
Contact Person:
Rev. Dudley E. Sarfaty

President Marvin McMickle of the New Jersey Council of Churches announced today that his organization's Governing Board has voted to officially intervene as *amicus curiae* in the school prayer lawsuit of 8 New Jersey Citizens, May v. Cooperman *et al*, being represented by Pellettieri, Rabstein and Altman of Trenton. Pastor McMickle said that the Council obviously believes deeply in prayer, but has the firm determination that government should not determine the WHEN, WHERE and HOW of prayer. "That would violate the United States' and New Jersey's constitutions. So we continue to support the judgments of our state's Governor and Attorney General."

President McMickle said that the Council, as the state's broad based ecumenical arm of 15 Protestant denominations, knew that there could be "no prayer without faith", and that, whether the government was leaving faith out or trying to introduce it, in either case they were in error.

"Such government regulation is offensive to our religious tradition," he said.

The Pastor of the St. Paul's Baptist Church of Montclair continued: "Even words ostensibly secular, such as Contemplation and Introspection are conceived by us to be two major components of Prayer . . an integral part of our communication with the Divine."

Rev. Mr. McMickle strongly disagreed with the legislators who claim that putting prayer back into the public schools will solve such discipline, moral and educational problems as exist. "Those are deep and complex social problems which need to be addressed with a longer lasting fervor than the advocates of school prayer seem to be willing to commit."

"Nothing now prevents our children from praying silently at any part of the school day. It is not government's role to encourage, discourage or regulate it. Our constant commitment is to faithful religion in a context of religious liberty and American pluralism."

Mr. McMickle criticized the school silence law as "one more in a stream of 17 school prayer bills which have been proposed in N.J. since 1970. The law, as written, is so vague, that it is almost impossible to apply. It would easily permit administrators and teachers to apply it unconstitutionally. In fact, we have already had word of at least one school district where the students have specifically been told to 'stand up and pray'.

"Our commitment to prayer is sure and certain. As the legislators seek to serve the school children of our state we remind them that returning prayer to N.J. Public Schools would not achieve the urgent social goals so dear to our citizens."

AFRICAN METHODIST EPISCOPAL CHURCH, New Jersey Conference; AFRICAN METHODIST EPISCOPAL ZION CHURCH, New Jersey Conference; AMERICAN BAPTIST CHURCHES OF NEW JERSEY; CHRISTIAN CHURCH, Northeastern Area Association; EPISCOPAL CHURCH, Diocese of Newark, Diocese of New Jersey; GENERAL BAPTIST CONVENTION OF NEW JERSEY; LUTHERAN CHURCH IN AMERICA, New Jersey Synod; OLD ROMAN CATHOLIC CHURCH; REFORMED CHURCH IN AMERICA, Particular Synod of New Jersey; RELIGIOUS SOCIETY OF FRIENDS,

New York Yearly Meeting; THE SALVATION ARMY; UNION AMERICAN METHODIST EPISCOPAL CHURCH; UNITED CHURCH OF CHRIST, Central Atlantic Conference; UNITED METHODIST CHURCH, New Jersey Conferences; UNITED PRESBYTERIAN CHURCH IN THE U.S.A., Synod of the Northeast.

PLAINTIFFS' EXHIBIT 69, NEW JERSEY SCHOOL BOARDS ASSOCIATION POSITION STATEMENT, 12/13/82

(SEAL) NEW JERSEY

SCHOOL BOARDS ASSOCIATION

Headquarters: 315 West State Street, P.O. Box 909,
Trenton, New Jersey 08605
Telephone (609) 695-7600

POSITION STATEMENT

A-1064
(Zangari)

A "MOMENT OF SILENCE" IN NEW JERSEY'S PUBLIC SCHOOLS

This past week, after long and careful consideration, Governor Thomas Kean returned A-1064 to the Legislature with an absolute veto on the grounds that the moment of silence required by the bill was constitutionally impermissible in its intent and unnecessary in its actual application.

The New Jersey School Boards Association concurs with the Governor's assessment. Although "prayer" is not specifically mentioned in this legislation, requiring a "moment of silence" for voluntary student meditation and introspection is clearly directed toward encouraging public—albeit silent—prayer, and as such violates the spirit of the First Amendment.

If, as proponents argue, the sole purpose of this legislation is to provide students with an opportunity to collect their thoughts and prepare for a day's learning, then there is no reason to require such an opportunity by law. At present, any teacher may conduct a period of silence at his or her own discretion to maintain order and foster concentration; any student who wishes a moment to gather his or her own thoughts—whether religious or secular—is legally free to do so.

The duty of the State Legislature is neither to pass judgment on the desirability of "restoring" prayer to the public schools nor to impose disciplinary procedures on the classroom teachers of New Jersey, but to uphold the United States Constitution and protect the citizens of this state from unwarranted intrusions into the control of their public schools.

THE NEW JERSEY SCHOOL BOARDS ASSOCIATION URGES YOU TO SUSTAIN THE GOVERNOR'S VETO AND VOTE *NO* ON A-1064!

12/13/82-102/2435w

PLAINTIFFS' EXHIBIT 77, MEMORANDUM BY MARIANNE RHODES ON ASSEMBLY EDUCATION COMMITTEE MEETING, MONDAY, MAY 17, 1982

M E M O R A N D U M

TO: GOVERNMENTAL RELATIONS

FROM: MARIANNE

SUBJECT: ASSEMBLY EDUCATION COMMITTEE MEETING MONDAY, MAY 17, 1982

DATE: MAY 18, 1982

The following members of the committee were present: Garvin, Chairwoman; Rocco, Doria, Naples, Palaia. The following bills were discussed. Please note action taken.

S-144 (Rand). Prohibits the sale of food of minimal nutritional value in any elementary or secondary school in this state from the beginning of the school day until the last lunch period. Senator Rand was present to speak in support of his bill. He stated that the Senate Committee had removed from the bill the list of junk food that had been included so that currently the Senate Committee Substitute simply requires all elementary and secondary schools to observe the federal standards for "junk food". In 1980 the U.S. Department of Agriculture promulgated rules and regulations regulating the sale of junk foods. Currently, these regulations only apply to those schools participating in the national school lunch and breakfast programs. The Senate Committee Substitute requires all elementary and secondary schools in the state to observe the federal standards for junk foods. All but 35 of New Jersey's school districts now participate in the National School Lunch Program and so they are already prohibited from selling "junk food" (By USDA Standards) until after the last lunch period. Therefore, this mandate would affect only those 35 school districts which would now be prohibited from selling junk food until after the last lunch period.

Those groups speaking in support of the legislation were the Dental Association, the department of education, and NJSBA. Ted Reid offered an amendment which was accepted by the sponsor, Senator Rand, which deleted the reference in the bill to the rule-making sections of the *Federal Register* (Delete, "in through 6758", lines 2 through 4). The committee agreed to amend the bill as recommended, and the bill was released by unanimous vote.

A-1064 (Zangari). This bill would require principals and teachers in all schols within the state to permit a student to observe a one-minute period of silence before the opening exercises of the school day. The period of silence is to be used for a private contemplation or introspection. Assemblyman Zangari was present to speak in support of his bill. He indicated that the bill had been reduced to only 54 words and that it was very important that our society get back to the religious values which are deeply embeded in our ideals. He quoted from President Reagan who has expressed his support for a constitutional amendment to permit school prayer. Present to testify against the bill was the American Civil Liberties Group and the NJASA who stated they felt there was a constitutional problem with the legislation. Ted Reid from NJSBA also indicated that the Association opposed the legislation. He referred to the U. S. District Court for the State of Massachusetts who found a statute which required a period of silence for meditation in that state to be constitutional. The court held that the state had a legitimate secular purpose in acting this statute, and that the pupils tend to learn greater self discipline and respect from authority from the required moment of silence. In other words, the court found that the statute could be interpreted as having a purpose other than the encouragement of prayer. He stated that the bill is unnecessary since a board could adopt a policy which would require teachers to offer students the opportunity to observe a period of silence currently. That is assuming that the silence would be used for a secular purpose rather than a religious one. While student participation in the period of silence in this bill is voluntary, the bill is a mandate insofar as the boards are required to provide

the minute of silence. Although there were no comments from the public in support of the legislation, the members of the committee all expressed positive comments regarding the legislation. The bill was released by unanimous vote.

A-177 (Rocco). This bill provides that a high school drivers license applicant's written examine may be read by a certified special education teacher to certain reading disabled students with the students recording their responses on the appropriate answer sheet. The sponsor, Assemblyman Rocco, submitted an amendment to add driver education instructors to page 1, section 1, line 5. After "certified", insert "driver education instructor or" Rocco stated that this bill would help pupils who have reading problems to take the written exam for a driver's license in a school environment.

NJSBA spoke in support of the legislation but raised the question interesting enough, there is no requirement for students to be able to read road signs in order for them to be issued a driver's license. Bob Swissler from the department of education spoke in support of the legislation stating that this would affect the approximately 7,000 special education students in the state. The committee agreed to support the amendment and voted to release the bill as amended.

A-1367 (Garvin). This bill amends the pre-school handicapped statute to change the effective date of program implementation from the 1982-83 school year to the 1983-84 school year, which was the intent of the legislation when the bill became law. For the purpose of calculating state aid for the 83-84 school year, the resident enrollment in each district shall be adjusted by an amount equal to the number of pre-school handicapped pupils 3 through 5 years of age enrolled as of the last school day of September 1982 or the estimated number of such pupils to be situation in Newark which has just had a referendum and agreed to go to an elected school board. The bill provides that each board member be elected by ward, or which there are five, and four members be elected at large. The Department

of Education spoke in opposition to the bill, stating that it created too political a situation because it sets up a ward constituency which doesn't necessarily take into consideration the entire district's needs. The NJSBA stated that although we had official position on the bill, some ward representation does make sense because it is such a large city. Senator Wynona Lipman spoke in support of her legislation, stating that she has a letter from Mayor Gibson and the City Administration requesting this bill be passed. She said it does a great deal to solve the problem of ethnic representation since there are various ethnic populations in the different wards of the city. This bill will enable each ward to have their own representation. Senator Feldman is a co-sponsor of the legislation. *The committee voted to release the bill and did not consider any amendments.*

S-435 (Codey). Provides that any institution or program of education that serves senior citizens shall be eligible to receive proceeds from the state lottery. The purpose of the bill is to expand the use of lottery to eligible senior citizens. Apparently, there was over $230 million in lottery money, which will be available for these programs in 1983. Currently, the allocation of the lottery fund is divided among various direct state services and state aid. In the area of education the Katzenbach School for the Deaf, and Project Co-ed received money from the lottery fund in addition to a number of other state institutions. Nonpublic school aid, educational improvement centers, school building aid, debt service, and school building aid also received a portion of the lottery money. *A technical amendment was made to the bill which was then released as amended.*

A-1064 (Zangari). Permits students of public schools to participate in a one-minute period of silence before the opening of each school day. While this bill permits students to observe the period of silence, it requires teachers to provide the moment of silence each morning. Assemblyman Zangari was there to speak on his bill. Senator Feldman once again asked the question, "Since there is

nothing that prohibits students from praying, why is this bill necessary?'' Zangari responded, ''They publicly won't do it unless they are directed.'' Feldman stated, ''Prayer should be done in the home. This is simply another way of bringing back religion in the schools. I believe in separation of church and state.'' Senator Ewing: ''Why shouldn't this be allowed? Why not give students the opportunity?'' A good deal of squabbling went back and forth between Feldman, Zangari, and Ewing; Senator Dalton remained rather quiet on the issue. NJSBA spoke in opposition; however, there were three votes for release and *the committee decided to release the bill so that it could be in a position for the entire floor to debate the issue.* Senators Dumont, Ewing and Dalton (reluctantly) voted yes; Senator Feldman voted no.

NOTICE OF APPEAL FILED FEBRUARY 14, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually; JEAN ROSS, as natural parent of DAMON ROSS, an infant, and JEAN ROSS, individually; BONNIE SCHORSKE, As natural parent of MARK TULLOSS, an infant, and BONNIE SCHORSKE, individually; BRENDA BUTLER, as natural parent of CARY BUTLER, an infant, and BRENDA BUTLER, individually; GARY DREW, individually, Plaintiffs, vs. DR. SAUL COOPERMAN, Commissioner of The Department of Education; NEW JERSEY DEPARTMENT OF EDUCATION; EDISON TOWNSHIP BOARD OF EDUCATION; OLD BRIDGE TOWNSHIP BOARD OF EDUCATION, Defendants and	Civil Action No. 83-89 NOTICE OF APPEAL

ALAN J. KARCHER as Speaker of the New Jersey General Assembly; the NEW JERSEY GENERAL ASSEMBLY; CARMEN A. ORECHIO, As President of the New Jersey Senate and the NEW JERSEY SENATE,

Defendant-Intervenors

Notice is hereby given that Alan J. Karcher as Speaker of the New Jersey General Assembly; the New Jersey General Assembly; Carmen A. Orechio as President of the New Jersey Senate and the New Jersey Senate, defendant-intervenors above named hereby appeal to the United States Court of Appeals for the Third Circuit from the Final Judgment entered in this action on the 10th day of November, 1983 and as further amended by Order dated the 26th day of January, 1984 allowing counsel fees and costs to the plaintiffs.

MARINARI & FARKAS, P.A.

By /s/ Lawrence T. Marinari
Attorney for Defendant-Intervenors Alan J. Karcher as Speaker of the New Jersey General Assembly, the New Jersey General Assembly, Carman A. Orechio as President of the New Jersey Senate and the New Jersey Senate

and

/s/ Robert A. Farkas

ORDER OF THE SUPREME COURT OF THE UNITED STATES DATED JANUARY 27, 1987 POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION TO THE HEARING OF THE CASE ON THE MERITS

SUPREME COURT OF THE UNITED STATES

No. 85-1551

Alan J. Karcher, Speaker of the New Jersey Assembley, et al.,

Appellants,

v.

Jeffrey May, et al.

APPEAL from the United States Court of Appeals for the Third Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.

January 27, 1987